

BOGLE & GATES

CBNT file
18.6.1.1
V1

LAW OFFICES

LEONARD H. SORRIN

Two Union Square
601 Union Street
Seattle, Washington 98101-2346

Main Office: (206) 682-5151
Facsimile: (206) 621-2660
Direct Dial: (206) 621-1557

Anchorage
Bellevue
Portland
Tacoma
Vancouver, B.C.
Washington, D.C.
Yakima

14489/48411

September 13, 1994

HAND DELIVERED

Ms. Allison Hiltner
Remedial Project Manager
Environmental Protection Agency
1200 Sixth Avenue
Seattle, Washington 98104

RECEIVED
SEP 13 1994
SUPERFUND REMEDIAL DIVISION

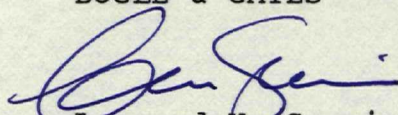
Re: Hylebos Waterway

Dear Allison:

Enclosed please find copies of the Hylebos Waterway Access Agreements. Please call if you have any questions.

Very truly yours,

BOGLE & GATES


Leonard H. Sorrin

Enclosures

USEPA SF



1366548

RECEIVED

SEP 13 1994

SUPERFUND REMEDIAL BRANCH

RECEIVED

JUN 06 1994

RIGHT OF ENTRY AGREEMENT

BOGLE & GATES

THIS AGREEMENT, is made between the Hylebos Cleanup Committee ("HCC"), its individual members, the Port of Tacoma, Kaiser Aluminum & Chemical Corporation, ASARCO, Inc., Occidental Chemical Corporation, Elf ATOCHEM North America, Inc., and General Metals of Tacoma, Inc., ("Licensee") and the undersigned owner and/or operator ("Licensor").

WHEREAS, the HCC was formed in order to perform pre-remedial design for the Hylebos Waterway located within the Commencement Bay/Near Shore Tide Flats Superfund Site, and has entered into an Administrative Order on Consent with the United States Environmental Protection Agency ("EPA"), Docket No. 1093-07-03-104/122 ("AOC"), which includes a Statement of Work ("SOW"), requiring that certain work be performed in connection with the study of the Hylebos Waterway; and

WHEREAS, it will be necessary for Licensee and its collective agents, contractors and subcontractors to enter upon Licensor's property to conduct certain limited environmental tests as set forth in Appendix A of this Agreement (the "Work"); and

WHEREAS, in order to allow the Work to take place, Licensor is willing to grant a temporary license for such entry to Licensee and its agents, contractors, and subcontractors and their consultants, subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties agree as follows:

1. Permission, Location and Access. Subject to the terms and conditions hereinafter set forth, Licensee and its agents, contractors, and subcontractors are granted a temporary license to enter upon, and freely move about, Licensor's property, a legal description of which is provided in Exhibit B, attached hereto and incorporated herein and any structures appurtenant thereto ("the Property") for purposes of conducting the Work in accordance with the schedule set forth in Table 1 of the SOW, as may be amended from time to time. EPA and its designated representatives, the Washington State Department of Ecology and its designated representatives ("DOE"), and the Commencement Bay Natural Resource Damage Trustees and their designated representatives, are granted a temporary license to the same extent for purposes of supervision of the Work.

2. Entry Upon Property. Licensee and its agents, contractors, and subcontractors shall provide Licensor with reasonable notice of the schedule of anticipated dates of access prior to the contemplated start date, and shall promptly notify Licensor of any modifications in the schedule. Licensor will provide Licensee, within one calendar week of any such request, the

known schedule of its shipping and berthing traffic on the Hylebos Waterway for the upcoming month. Any subsequent changes in the shipping and berthing schedule shall be provided to Licensee within 48 hours of receipt by Licensor.

3. Liability. The HCC shall indemnify and hold harmless Licensor from and against any and all losses, expenses, costs, obligations, recoveries, liens, claims, demands or causes of action for death, personal injury or property damage including reasonable attorneys' fees and costs but excluding liability relating to the existence of any environmental contamination at the Property ("Damages"), that arise out of or in connection with the willful misconduct or negligence of Licensee and its agents, contractors, and subcontractors in entering upon or performing work on the Property. The indemnity obligation of the HCC hereunder shall be subject to the following conditions and limitations:

(i) the HCC shall not be liable and shall have no obligation to indemnify Licensor hereunder to the extent Damages are caused by Licensor or any other third party other than Licensee and the HCC shall not be liable and shall have no obligation to indemnify Licensor hereunder for losses due to interruptions of business or for any other form of incidental or consequential damages;

(ii) the HCC shall not be liable and shall have no obligation to indemnify Licensor hereunder for any Damages that are not covered under or that exceed the specified limits and available proceeds of any insurance policies maintained by the HCC. Said insurance policy shall provide such coverage in the aggregate amount of \$1,000,000.00; and

(iii) Licensor shall notify the HCC in writing promptly after Licensor obtains knowledge of the occurrence of any event or the existence of any facts which may become the basis of a claim by Licensor for indemnity pursuant to this section and shall take reasonable steps to mitigate any damages.

4. Interference with Licensor's Operations. All activity permitted by this temporary license shall be carried on in such a manner so as not to unduly interfere with Licensor's property and operations or its use of its facilities. Licensee's entry upon Licensor's property shall be coordinated with Licensor in such a way as to minimize such interference. Licensor agrees to move non-fixed structures or machinery as needed for completion of the Work and further agrees to provide necessary plant training and on-site escort to Licensee and its agents, contractors, and subcontractors.

5. Effective Date and Term of Agreement. This Agreement shall be effective upon signature by all parties. Access granted hereunder to Licensee shall expire thirty days after the Work has been completed to the satisfaction of the EPA or such earlier date as EPA may authorize. At the completion of the term of this temporary license, Licensee shall restore Licensor's property to a condition as near as possible to the condition of the property before the initiation of the work contemplated herein. Any monitoring equipment installed on the Property shall be removed in compliance with applicable rules and regulations.

6. Licensor's Warranty. Licensor represents and warrants that it is the owner of or otherwise has authority, without limitation, to grant access to the above described premises.

7. Applicable Law. The parties agree that, without respect to its conflict of laws jurisprudence, the laws of the State of Washington shall apply to this Agreement.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this agreement as of the day and year opposite each parties signature.

HYLEBOS CLEANUP COMMITTEE

Date: 28 Jun 1994

By: [Signature]

LICENSOR

Date: 5-19-94

By: [Signature]

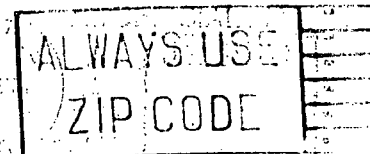
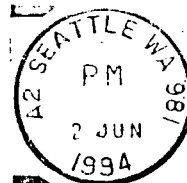
ENVIRONMENTAL PROTECTION AGENCY

1200 SIXTH AVENUE M/S HW-113
SEATTLE, WASHINGTON 98101-9797

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE, \$300

AN EQUAL OPPORTUNITY EMPLOYER



Leonard Sorrin
Bogle and Gates
Two Union Square
601 Union Street
Seattle, WA 98101-2346



Sawm

McFARLAND CASCADE HOLDINGS, INC.

P.O. Box 1496 • TACOMA, WASHINGTON 98401-1496
1640 EAST MARC • TACOMA, WASHINGTON 98421-2939
206-572-3033 FAX: 206-627-0764

RECEIVED

JUN 11 1994

BOGLE & GATES

May 27, 1994

LEONARD H SORRIN
BOGLE & GATES
4700 2 UNION STREET
601 UNION STREET
SEATTLE WA 98101-2346

RECEIVED
SEP 13 1994
SUPERFUND REMEDIAL BRANCH

RE: HYLEBOS WATERWAY ACCESS AGREEMENT

Dear Mr. Sorrin:

Please find enclosed the Access Agreement for the Cascade Timber Yard #1 site. The enclosed has been signed by our company representative. I would appreciate a copy of the agreement be sent back to me for my files after it is signed by the Hylebos Cleanup Committee representative.

Please contact me if there are any questions or further comments that you may have, at (206) 572-3033.

SINCERELY,



LES D. LONNING
MANAGER, TECHNICAL SERVICES &
ENVIRONMENTAL AFFAIRS

ks

Enclosure

c: Greg D. McFarland
Lynda L. Brothers

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made between the Hylebos Cleanup Committee ("HCC" or "Licensee"), and the undersigned owner and/or operator ("Licensor") (collectively the "Parties").

WHEREAS, the HCC, consisting of the Port of Tacoma, Kaiser Aluminum & Chemical Corporation, ASARCO, Inc., Occidental Chemical Corporation, Elf ATOCHEM North America, Inc., and General Metals of Tacoma, Inc., was formed in order to perform pre-remedial design for the Hylebos Waterway located within the Commencement Bay/Near Shore Tideflats Superfund Site, and has entered into an Administrative Order on Consent with the United States Environmental Protection Agency ("EPA"), Docket No. 1093-07-03-104/122 ("AOC"), which includes a Statement of Work ("SOW"), requiring that certain work be performed in connection with the study of the Hylebos Waterway; and

WHEREAS, it will be necessary for Licensee and its collective agents, contractors and subcontractors to enter upon Licensor's property to conduct certain limited environmental work and for purposes of ingress and egress for such work. The work to be performed is set forth in Appendix A of this Agreement (the "Work") and shall not be performed upland of the "higher high water line"; and

WHEREAS, in order to allow the Work to take place, Licensor is willing to grant a temporary license for such entry to Licensee and its agents, contractors, and subcontractors and their consultants, subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties agree as follows:

1. Permission, Location and Access. Subject to the terms and conditions hereinafter set forth, Licensee and its agents, contractors, and subcontractors are granted a temporary license to enter upon Licensor's property, the legal description of which is as follows:
That portion of the E $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 26, Twp. 21 N, Rge 3 E., W.M., lying South of South line of East Side Drive; EXCEPT that portion thereof conveyed by Warranty Deed dated November 28, 1966, recorded January 4, 1967 under Recording No. 2173676; ALSO the E. 428.5 feet of Lot 12, as measured along the North line thereof in Sec. 26, Twp. 21 North, Rge. 3 E., W.M.;
EXCEPT Commercial Waterway No. 1 (Hylebos Waterway). Situate in the County of Pierce, and any structures appurtenant thereto (the "Property") for State of Washington purposes of conducting the Work in accordance with the schedule set forth in Table 1 of the SOW, as may be amended from time to time and for ingress and egress to perform the work. EPA and its designated representatives, the Washington State Department of Ecology and its designated representatives ("DOE"), and the Commencement Bay Natural Resource Damage Trustees and their

designated representatives, are granted a temporary license to the same extent for purposes of supervision of the Work. This temporary license in no way limits the authority of EPA and DOE under applicable federal or state laws to enter said property and to move freely about said property in accordance with such federal or state laws.

2. Entry Upon Property. Licensee and its agents, contractors, and subcontractors shall provide Licensor with at least two calendar weeks notice of the schedule of anticipated dates of access prior to the contemplated start date, and shall promptly notify Licensor of any modifications in the schedule. At least one week prior to each scheduled entry on the Property, Licensor shall provide Licensee with any relevant information regarding site conditions that could be impacted by the scheduled sampling, including, but not limited to, the presence of underground structures, utilities, and outfalls. Licensor will provide Licensee, within one calendar week of any request by Licensee, the known schedule of its shipping and berthing traffic on the Hylebos Waterway for the upcoming month. Any subsequent changes in the shipping and berthing schedule shall be provided to Licensee within 48 hours of receipt by Licensor. All notices to the Licensee shall be directed to:

Paul Fuglevand
HCC Project Manager
Dalton, Olmsted & Fuglevand
19017 120th Avenue N.E., Suite 107
Bothell, Washington 98011
Ph: (206) 486-7905
Fax: (206) 486-7651

All notices to the Licensor shall be directed to:

Name: Les D. Lonning
Organization: McFarland Cascade Holdings, Inc.
Address: P.O. Box 1496
Tacoma, WA 98401-1496
Ph: (206) 572-3033
Fax: (206) 627-6887

On-site contact for the Licensor is:

Name: Les D. Lonning
Organization: McFarland Cascade Holdings, Inc.
Address: P.O. Box 1496
Tacoma, WA 98401-1496
Ph: (206) 572-3033
Fax: (206) 627-6887

3. Liability. The HCC shall, under the terms and conditions set forth below, indemnify and hold harmless Licensor

from and against any and all losses, expenses, costs, obligations, recoveries, liens, claims, demands or causes of action for death, personal injury or property damage including reasonable attorneys' fees and costs but excluding liability relating to any environmental contamination at the Property ("Damages"), that arise out of or in connection with the willful misconduct or negligence of Licensee, its agents, contractors, and/or subcontractors in entering upon or performing the Work on the Property. The indemnity obligation of the HCC hereunder shall be subject to the following conditions and limitations:

(i) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any proportionate share of Damages caused by the negligence or willful misconduct of Licensor or any other third party other than Licensee's agents, contractors and subcontractors and the HCC shall not be liable and shall have no obligation to indemnify Licensor for losses due to interruptions of business or for any other form of incidental or consequential damages;

(ii) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any Damages that are not covered under or that exceed the specified limits and available proceeds of the commercial general liability insurance policy maintained by the HCC. Such insurance policy shall provide coverage in the aggregate amount of \$2,000,000, with a \$1,000,000 per occurrence limitation. Upon request, the HCC shall furnish Licensor proof of such insurance. Licensee shall maintain the insurance in full force and effect during the term of this Agreement and shall provide prior written notice to Licensor in the event of a material change in or cancellation or nonrenewal of the insurance policy. Should Licensee fail to obtain insurance upon nonrenewal or cancellation, this provision shall be subject to re-negotiation by the parties in order to effectuate the intent of this Section 3(ii);

(iii) Licensor shall notify the HCC in writing promptly after Licensor obtains knowledge of the occurrence of any event or the existence of any facts which may become the basis of a claim by Licensor for indemnity pursuant to this section;

(iv) HCC and its agents, contractors, and subcontractors recognize that they are waiving immunity under Industrial Insurance Law, Title 51 RCW, and that this indemnification clause has been mutually negotiated;

(v) the individual members of the HCC shall under no circumstances be liable in any manner to Licensor for

matters addressed by, relating to or arising from this Agreement and the provisions of this Section 3 shall be the sole and exclusive remedy of Licensor with respect to matters addressed by, relating to or arising from this Agreement. For purposes of the enforcement of this provision, the individual members of the HCC shall be construed to be third party beneficiaries of this Agreement.

4. Interference with Licensor's Operations. All activity permitted by this temporary license shall be carried on in such a manner so as not to unduly interfere with Licensor's property and operations or its use of its facilities. Licensee's entry upon Licensor's property shall be coordinated with Licensor in such a way as to minimize such interference. Licensor shall provide the Licensee with any relevant health and safety information applicable to the property if required by Licensor for access. Licensor shall move non-fixed structures or machinery as needed for completion of the Work and shall provide necessary plant training and on-site escort to Licensee and its agents, contractors, and subcontractors if required by Licensor for access.

5. Sampling and Analysis. Licensor or its authorized representative shall have the right, at Licensor's expense, to take split samples of sampling completed on the Property provided enough sampling material is available. Licensor shall give the Licensee one week notice of the desired split sampling and shall cooperate fully in the coordination of the split sampling. Licensee shall have the right, at Licensee's expense, to obtain, within a reasonable period of time, copies of the results of any split samples taken by Licensor. Upon request, Licensor shall also have the right, at Licensor's expense, to obtain, within a reasonable period of time, copies of the sampling results from the Property. It shall be the sole responsibility of the Licensee to lawfully dispose of any material Licensee has gathered as part of the sampling process. Licensor shall have the same responsibility with respect to any split samples taken by Licensor.

6. Effective Date and Term of Agreement. This Agreement shall be effective upon signature by all parties and shall terminate upon receipt by the Licensee of notice that the Work has been completed to the satisfaction of the EPA or such earlier date as EPA may authorize. Licensee shall promptly notify Licensor of such notice. At the completion of the term of this temporary license, Licensee shall restore Licensor's property to a condition as near as possible to the condition of the property before the initiation of the work contemplated herein.

7. Licensor's Warranty. Licensor represents and warrants that it is the owner of or otherwise has authority to grant access to the above described premises.

8. Applicable Law. The parties agree that, without respect to its conflict of laws jurisprudence, the laws of the State of Washington shall apply to this Agreement.

9. Recording. In order to ensure that subsequent purchasers have notice of this Agreement, Licensors hereby agree to record this Agreement with the Pierce County Auditor and forward a conformed copy to the Licensee as set forth in Paragraph 2 of this Agreement. Upon receipt of written notice pursuant to Paragraph 6 of this Agreement of the termination of access granted hereunder, Licensors may, at Licensors' option and expense, cause such termination notice to be similarly recorded.

10. Parties Bound. This Agreement shall be binding upon the Parties, their heirs, successors and assigns.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this agreement as of the day and year opposite each party's signature.

HYLEBOS CLEANUP COMMITTEE

Date: 28 July 1994

By: 

LICENSOR

Date: May 25, 1994

By: 

For: McFarland Cascade Holdings, Inc.
Owner/Operator

Address: P.O. Box 1496
Tacoma, WA 98401-1496

APPENDIX A

Shoreline Sampling, Event 1B: Collect samples from the shoreline of the Hylebos Waterway (0' to + 12' MLLW) to identify sediments or other materials which may be sources of chemicals or concern to waterway sediments, and also to identify sediment which may require remediation. The sampling will generally involve walking along the shoreline and collecting surface sediment from five to ten locations along each property. The sediment from each property will be composited and submitted for chemical analysis. Currently 63 shoreline composites, covering the entire shoreline, have been identified but not yet reviewed or accepted by EPA. In addition, five properties will have core samples drilled below the mudline in locations to be determined shortly. When they have been accepted by the EPA, the locations will be forwarded to all landowners.

DRAFT

SEGMENT 4

SEGMENT 3

NOTES:

1. HYDROGRAPHIC SURVEY BY BLUE WATER ENGINEERING JUNE, 1993
2. PLANIMETRIC FEATURES AND TOPOGRAPHY MAPPED BY AERO-DATA CORPORATION ARE FOR CONDITIONS ON MAY 7, 1993
3. VERTICAL DATUM: PORT OF TACOMA/CORPS OF ENGINEERS ESTABLISHED 1973
MEAN LOWER LOW WATER = 0.0
4. --- EXISTING TOP OF BANK LOCATIONS ARE APPROXIMATE
5. [] REPRESENTS AREAS WITH INSUFFICIENT DATA FOR CONTOUR CREATION
6. --- PARCEL BOUNDARIES DIGITIZED FROM PARCEL MAPS PRODUCED BY THE CITY OF TACOMA, PUBLIC WORKS ENGINEERING GIS MAPPING
7. THE FOLLOWING DATA WAS DIGITIZED FROM A TACOMA/PIERCE CNTY HEALTH MAP (1988)
8. PARCEL NUMBERS TAKEN FROM PRC ENVIRONMENTAL MANAGEMENT (1993)
9. HYLEBOS WATERWAY SAMPLING STATIONS

734 SEEP

734 OUTFALL

① HY-91	SUBSURFACE CORE SAMPLES, SURVEY CODE, AND STATION ID																																				
② HY-13	SURFACE SAMPLES, SURVEY CODE, AND STATION ID																																				
● 1-50	PROPOSED STATION LOCATIONS FOR SAMPLING EVENT 1A AND STATION ID																																				
<table border="1"> <thead> <tr> <th>SURVEY REFERENCE</th><th>SURVEY CODE</th></tr> </thead> <tbody> <tr><td>Landau (1992)</td><td>1</td></tr> <tr><td>Landau (1991)</td><td>2</td></tr> <tr><td>Conestoga-Rovers & Associates (1989, 1990)</td><td>3</td></tr> <tr><td>Tetra Tech (1988)</td><td>4</td></tr> <tr><td>Tetra Tech (1985)</td><td>5</td></tr> <tr><td>Norton and Johnson (1985)</td><td>6</td></tr> <tr><td>Johnson et al. (1984)</td><td>7</td></tr> <tr><td>Dames and Moore (1981)</td><td>8</td></tr> <tr><td>Riley et al. (1981)</td><td>9</td></tr> <tr><td>Norton and Barnard (1992)</td><td>11</td></tr> <tr><td>Boateng and Associates (1992)</td><td>12</td></tr> <tr><td>Sweet-Edwards/EMCON (1991)</td><td>13</td></tr> <tr><td>Boateng and Associates (1990)</td><td>14</td></tr> <tr><td>Haffner (1989)</td><td>15</td></tr> <tr><td>Sweet-Edwards/EMCON (1989)</td><td>16</td></tr> <tr><td>Dames and Moore (1985)</td><td>17</td></tr> <tr><td>Ecology (1982)</td><td>18</td></tr> </tbody> </table>		SURVEY REFERENCE	SURVEY CODE	Landau (1992)	1	Landau (1991)	2	Conestoga-Rovers & Associates (1989, 1990)	3	Tetra Tech (1988)	4	Tetra Tech (1985)	5	Norton and Johnson (1985)	6	Johnson et al. (1984)	7	Dames and Moore (1981)	8	Riley et al. (1981)	9	Norton and Barnard (1992)	11	Boateng and Associates (1992)	12	Sweet-Edwards/EMCON (1991)	13	Boateng and Associates (1990)	14	Haffner (1989)	15	Sweet-Edwards/EMCON (1989)	16	Dames and Moore (1985)	17	Ecology (1982)	18
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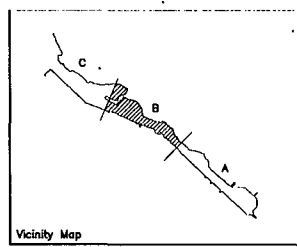


Figure 13b. Station locations for Sampling Event 1A in middle Hylebos Waterway.

DRAFT

SEGMENT 5

NOTES:

1. HYDROGRAPHIC SURVEY BY BLUE WATER ENGINEERING JUNE, 1993
2. PLANIMETRIC FEATURES AND TOPOGRAPHY MAPPED BY AERO-DATA CORPORATION ARE FOR CONDITIONS ON MAY 7, 1993
3. VERTICAL DATUM: PORT OF TACOMA/CORPS OF ENGINEERS ESTABLISHED 1973
MEAN LOWER LOW WATER = 0.0
4. --- EXISTING TOP OF BANK LOCATIONS ARE APPROXIMATE
5. [] REPRESENTS AREAS WITH INSUFFICIENT DATA FOR CONTOUR CREATION
6. --- PARCEL BOUNDARIES DIGITIZED FROM PARCEL MAPS PRODUCED BY THE CITY OF TACOMA, PUBLIC WORKS ENGINEERING GIS MAPPING
7. THE FOLLOWING DATA WAS DIGITIZED FROM A TACOMA/PIERCE CNTY HEALTH MAP (1988)

734 SEEP

734 OUTFALL

8. PARCEL NUMBERS TAKEN FROM PRC ENVIRONMENTAL MANAGEMENT (1993)

9. HYLEBOS WATERWAY SAMPLING STATIONS

① HY-01 SUBSURFACE CORE SAMPLES, SURVEY CODE, AND STATION ID

② HY-13 SURFACE SAMPLES, SURVEY CODE, AND STATION ID

● 1-50 PROPOSED STATION LOCATIONS FOR SAMPLING EVENT 1A AND STATION ID

SURVEY REFERENCE	SURVEY CODE
Landa (1992)	1
Landa (1991)	2
Conestoga-Rovers & Associates (1989, 1990)	3
Tetra Tech (1988)	4
Tetra Tech (1985)	5
Norton and Johnson (1985)	6
Johnson et al. (1984)	7
Dames and Moore (1981)	8
Riley et al. (1981)	9
Norton and Barnard (1992)	11
Boateng and Associates (1992)	12
Sweet-Edwards/EMCON (1991)	13
Boateng and Associates (1990)	14
Haffner (1989)	15
Sweet-Edwards/EMCON (1988)	16
Dames and Moore (1985)	17
Ecology (1982)	18

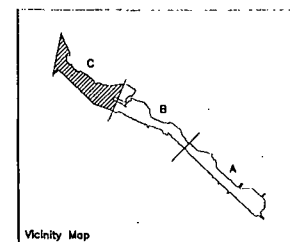


Figure 13c. Station locations for Sampling Event 1A in outer Hylebos Waterway.

STRIPLIN ENVIRONMENTAL ASSOCIATES, INC.

6541 Sexton Dr. NW, Suite E-1
Olympia, WA 98502 (206) 866-2336

DALTON, OLMSTED & FUGLEVAND, INC.

19017 120th Ave. N.E. Suite 107
Bothell, WA 98011 (206) 486-7905

PREPARED AND CONFIDENTIAL Work product prepared in anticipation of litigation

10/96

DRAWING: JOSE LIRE DATE 4/28/04

DRAFT

SEGMENT 2

NOTES:

1. HYDROGRAPHIC SURVEY BY BLUE WATER ENGINEERING JUNE, 1993
2. PLANIMETRIC FEATURES AND TOPOGRAPHY MAPPED BY AERO-DATA CORPORATION ARE FOR CONDITIONS ON MAY 7, 1993
3. VERTICAL DATUM: PORT OF TACOMA/CORPS OF ENGINEERS ESTABLISHED 1973
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734 SEEP

734 / OUTFALL

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9. HYLEBOS WATERWAY SAMPLING STATIONS

SURVEY REFERENCE	SURVEY CODE
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Johnson et al. (1984)	7
Dames and Moore (1981)	8
Riley et al. (1981)	9
Norton and Barnard (1992)	11
Boateng and Associates (1982)	12
Sweet-Edwards/EMCON (1991)	13
Boateng and Associates (1990)	14
Hefner (1989)	15
Sweet-Edwards/EMCON (1988)	16
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Ecology (1982)	18

● HY-91 SUBSURFACE CORE SAMPLES, SURVEY CODE, AND STATION ID
 ■ HY-13 SURFACE SAMPLES, SURVEY CODE, AND STATION ID
 ● I-50 PROPOSED STATION LOCATIONS FOR SAMPLING EVENT 1A AND STATION ID

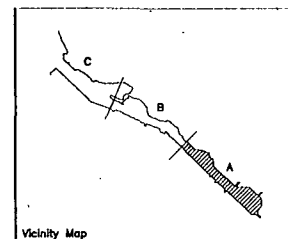


Figure 13a. Station locations for Sampling Event 1A in Inner Hylebos Waterway.

STRIPLIN ENVIRONMENTAL ASSOCIATES, INC.

6541 Sexton Dr. NW, Suite E-1
Olympia, WA 98502 (206) 866-2336

DALTON, OLMSTED & FUGLEVAND, INC.

19017 120th Ave. N.E. Suite 107
Bothell, WA 98011 (206) 486-7905

PRIVILEGED AND CONFIDENTIAL - Work product prepared in anticipation of litigation

pa/96

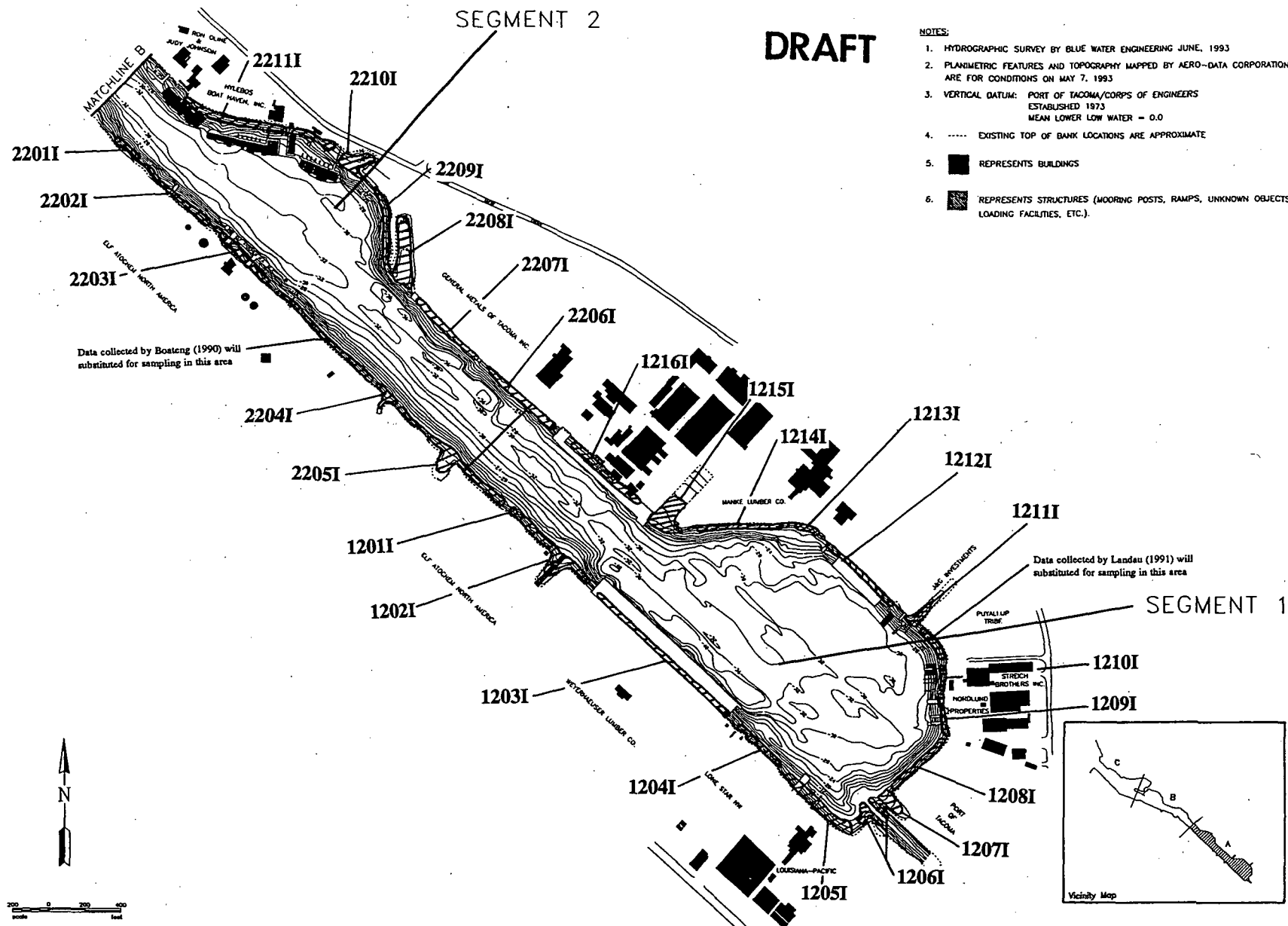
DRAWING: HYSEL386 DATE: 5/28/94

130

DRAFT

NOTES:

1. HYDROGRAPHIC SURVEY BY BLUE WATER ENGINEERING JUNE, 1993
2. PLANIMETRIC FEATURES AND TOPOGRAPHY MAPPED BY AERO-DATA CORPORATION ARE FOR CONDITIONS ON MAY 7, 1993
3. VERTICAL DATUM: PORT OF TACOMA/CORPS OF ENGINEERS ESTABLISHED 1973
MEAN LOWER LOW WATER = 0.0
4. ----- EXISTING TOP OF BANK LOCATIONS ARE APPROXIMATE
5. ■ REPRESENTS BUILDINGS
6. ■ REPRESENTS STRUCTURES (MOORING POSTS, RAMPS, UNKNOWN OBJECTS, LOADING FACILITIES, ETC.).



STRIPLIN ENVIRONMENTAL ASSOCIATES, INC.
6541 Sexton Dr. NW, Suite E-1
Olympia, WA 98502 (206) 866-2336

DALTON, OLMSTED & FUGLEVAND, INC.
19017 120th Ave. N.E. Suite 107
Bothell, WA 98011 (206) 486-7905

~~PRIVATE AND CONFIDENTIAL~~ Work product prepared in anticipation of litigation

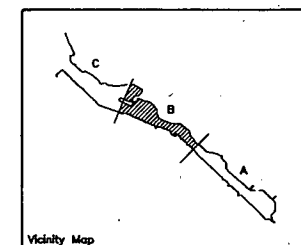
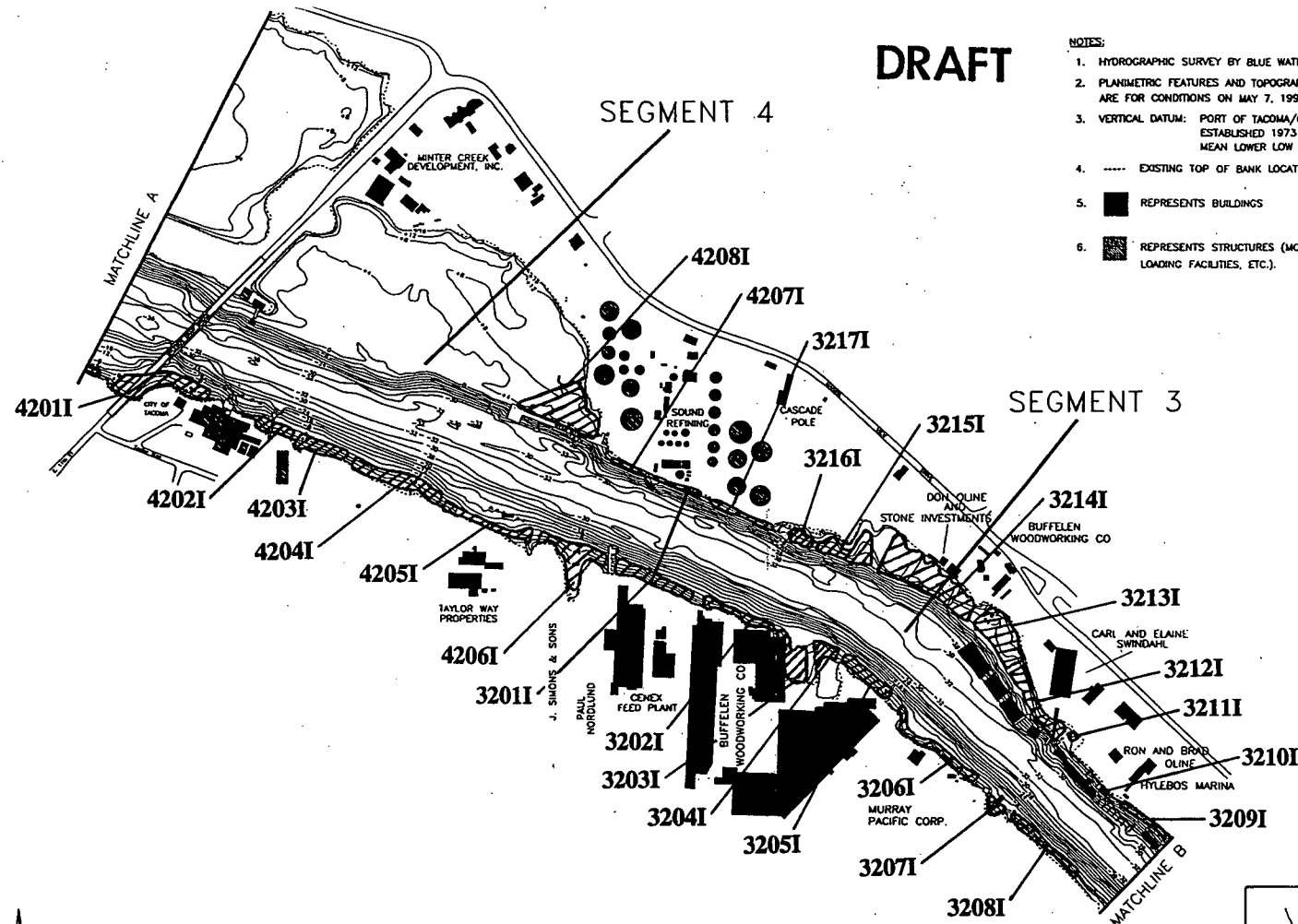
10/98

DRAWING: HYSE2302 DATE 4/28/94

Figure 1a. Sampling areas for Event 1B in inner Hylebos Waterway.

DRAFT**NOTES:**

1. HYDROGRAPHIC SURVEY BY BLUE WATER ENGINEERING JUNE, 1993
2. PLANIMETRIC FEATURES AND TOPOGRAPHY MAPPED BY AERO-DATA CORPORATION ARE FOR CONDITIONS ON MAY 7, 1993
3. VERTICAL DATUM: PORT OF TACOMA/CORPS OF ENGINEERS ESTABLISHED 1973
MEAN LOWER LOW WATER = 0.0
4. ----- EXISTING TOP OF BANK LOCATIONS ARE APPROXIMATE
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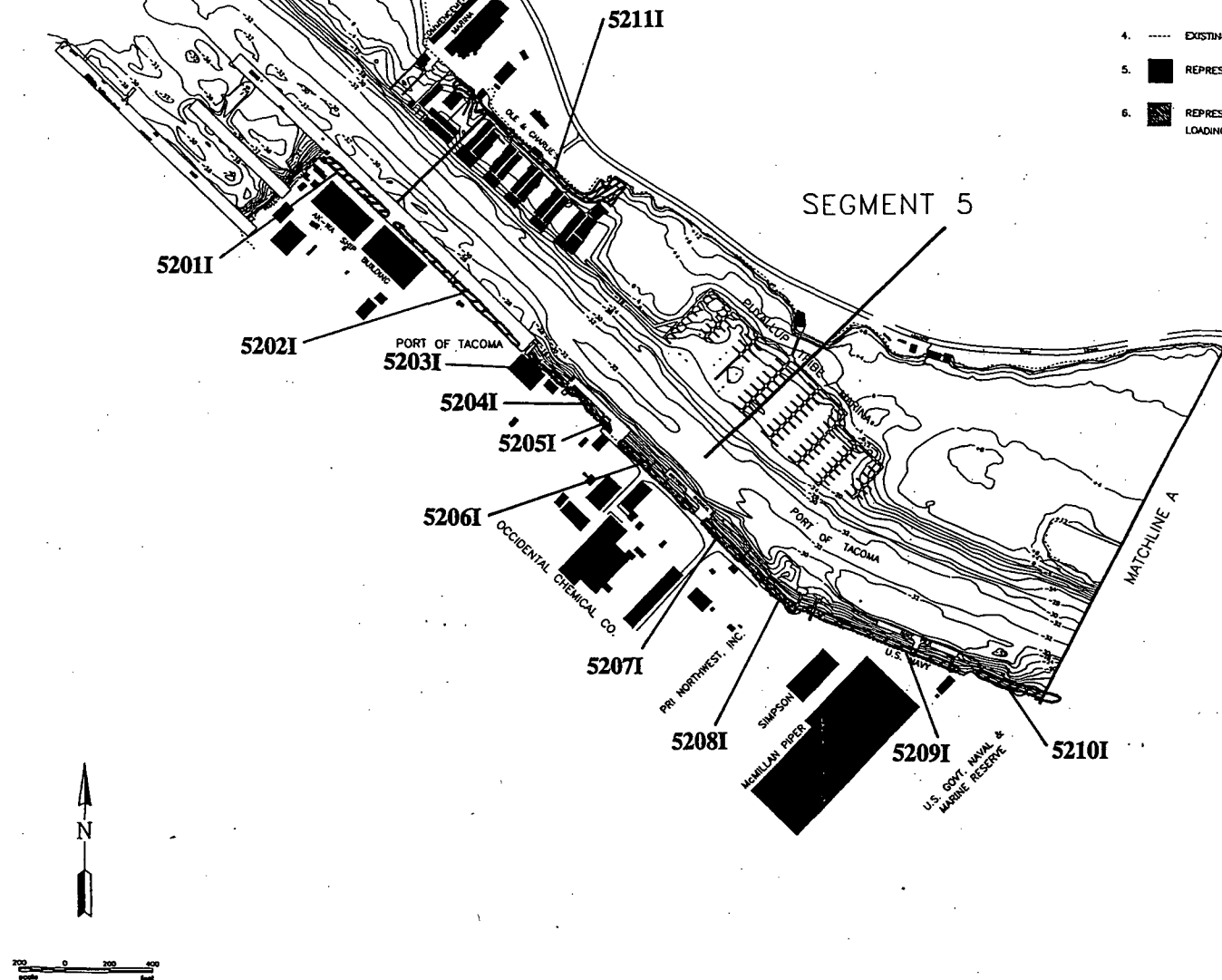
10/96

DRAWING: HYSE2282 DATE: 4/28/94

Figure 1b. Sampling areas for Event 1B in middle Hylebos Waterway.

DRAFT**NOTES:**

1. HYDROGRAPHIC SURVEY BY BLUE WATER ENGINEERING JUNE, 1993
2. PLANIMETRIC FEATURES AND TOPOGRAPHY MAPPED BY AERO-DATA CORPORATION ARE FOR CONDITIONS ON MAY 7, 1993
3. VERTICAL DATUM: PORT OF TACOMA/CORPS OF ENGINEERS ESTABLISHED 1973
MEAN LOWER LOW WATER = 0.0
4. --- EXISTING TOP OF BANK LOCATIONS ARE APPROXIMATE
5. ■ REPRESENTS BUILDINGS
6. ■ REPRESENTS STRUCTURES (MOORING POSTS, RAMPS, UNKNOWN OBJECTS, LOADING FACILITIES, ETC.).



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 19017 120th Ave. N.E. Suite 107
 Bothell, WA 98011 (206) 486-7905

PRIVILEGED AND CONFIDENTIAL Work product prepared in anticipation of litigation

10/98

DRAWING: HYSC2187 DATE 5/25/94

Figure 1c. Sampling areas for Event 1B
 in outer Hylebos Waterway.

BOGLE & GATES**MEMORANDUM**

RECEIVED MAY - 5 1994

May 3, 1994

14489-48411

TO: Hylebos Waterway Landowners/Operators
FROM: Leonard H. Sorrin
RE: Hylebos Waterway Access Agreement

RECEIVED
SEP 13 1994
SURROUND REMEDIAL BRANCH

On behalf of the Hylebos Cleanup Committee ("HCC"), consisting of Occidental Chemical Corp. ASARCO, Inc., the Port of Tacoma, General Metals of Tacoma, Inc., Kaiser Aluminum and Chemical Corp., and ELF Atochem-North America, Inc., I have enclosed the final version of the access agreement relating to the Hylebos Waterway. Many of the changes requested during our February 15, 1994 meeting have been incorporated into the Agreement.

The sampling to take place will be very unintrusive. The vast majority of the property along the Waterway will have several grab samples taken from the nearshore sediment. This sampling will not include any work from a boat: shoreline access will suffice. This work is described in Appendix A of the Right of Entry Agreement. In addition, core samples will be drilled starting at the mudline. With the exception of five properties, all of the core samples will be taken from Port of Tacoma property.

Many of you were interested in the level and type of insurance the HCC would carry related to its access to your property. Recently, the HCC obtained insurance for the contemplated activities. That insurance has been incorporated into the text of the Agreement.

As you know, the HCC has agreed to a timetable for the performance of the Work that will be difficult to satisfy under the best of circumstances. Failure to comply with that schedule could subject the members of the HCC to substantial stipulated penalties.

As a result, it is important to emphasize the significance of having signed agreements by May 15, 1994. If such access is not granted by that date, due to the substantial liability faced by the HCC, the HCC will be forced to request that the EPA acquire access pursuant to its powers under 42 U.S.C. § 9604.

Please fill in the legal description of your property and be sure to provide the name of your on-site coordinator and the person to whom you wish notices pursuant to the Agreement to be sent.

Should any questions arise during your review of the enclosed Agreement, please do not hesitate to call me at (206)621-1557 or Paul Fyglevand at (206)486-7905..

Attachment(s)

Memorandum to Hylebos Waterway Landowners/Operators
May 3, 1994
Page 2

cc: Hylebos Cleanup Committee (w/att.)
Lori Houck (w/att.)
Paul Fuglevand (w/att.)

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made between the Hylebos Cleanup Committee ("HCC" or "Licensee"), and the undersigned owner and/or operator ("Licensor") (collectively the "Parties").

WHEREAS, the HCC, consisting of the Port of Tacoma, Kaiser Aluminum & Chemical Corporation, ASARCO, Inc., Occidental Chemical Corporation, Elf ATOCHEM North America, Inc., and General Metals of Tacoma, Inc., was formed in order to perform pre-remedial design for the Hylebos Waterway located within the Commencement Bay/Near Shore Tidelands Superfund Site, and has entered into an Administrative Order on Consent with the United States Environmental Protection Agency ("EPA"), Docket No. 1093-07-03-104/122 ("AOC"), which includes a Statement of Work ("SOW"), requiring that certain work be performed in connection with the study of the Hylebos Waterway; and

WHEREAS, it will be necessary for Licensee and its collective agents, contractors and subcontractors to enter upon Licensor's property to conduct certain limited environmental work and for purposes of ingress and egress for such work. The work to be performed is set forth in Appendix A of this Agreement (the "Work") and shall not be performed upland of the "higher high water line"; and

WHEREAS, in order to allow the Work to take place, Licensor is willing to grant a temporary license for such entry to Licensee and its agents, contractors, and subcontractors and their consultants, subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties agree as follows:

1. Permission, Location and Access. Subject to the terms and conditions hereinafter set forth, Licensee and its agents, contractors, and subcontractors are granted a temporary license to enter upon Licensor's property, the legal description of which is as follows:

A tract of land located in Government Lots 10 & 11, Section 26,
Township 21 North, Range 3 East of the Willamette Meridian.

and any structures appurtenant thereto (the "Property") for purposes of conducting the Work in accordance with the schedule set forth in Table 1 of the SOW, as may be amended from time to time and for ingress and egress to perform the work. EPA and its designated representatives, the Washington State Department of Ecology and its designated representatives ("DOE"), and the

Commencement Bay Natural Resource Damage Trustees and their designated representatives, are granted a temporary license to the same extent for purposes of supervision of the Work. This temporary license in no way limits the authority of EPA and DOE under applicable federal or state laws to enter said property and to move freely about said property in accordance with such federal or state laws.

2. Entry Upon Property. Licensee and its agents, contractors, and subcontractors shall provide Licensor with at least two calendar weeks notice of the schedule of anticipated dates of access prior to the contemplated start date, and shall promptly notify Licensor of any modifications in the schedule. At least one week prior to each scheduled entry on the Property, Licensor shall provide Licensee with any relevant information regarding site conditions that could be impacted by the scheduled sampling, including, but not limited to, the presence of underground structures, utilities, and outfalls. Licensor will provide Licensee, within one calendar week of any request by Licensee, the known schedule of its shipping and berthing traffic on the Hylebos Waterway for the upcoming month. Any subsequent changes in the shipping and berthing schedule shall be provided to Licensee within 48 hours of receipt by Licensor. All notices to the Licensee shall be directed to:

Paul Fuglevand
HCC Project Manager
Dalton, Olmsted & Fuglevand
19017 120th Avenue N.E., Suite 107
Bothell, Washington 98011
Ph: (206) 486-7905
Fax: (206) 486-7651

All notices to the Licensor shall be directed to:

Name: Carl Swindahl
Organization: Modutech Marine, Inc.
Address: 2218 Marine View Drive
Tacoma, WA 98422
Ph: 206-272-9319
Fax: 206-272-9337

On-site contact for the Licensor is:

Name: Darrin Swindahl
Organization: Modutech Marine, Inc.
Address: 2218 Marine View Drive
Tacoma, WA 98422
Ph: 206-272-9319
Fax: 206-272-9337

3. Liability. The HCC shall, under the terms and conditions set forth below, indemnify and hold harmless Licensor from and against any and all losses, expenses, costs, obligations, recoveries, liens, claims, demands or causes of action for death, personal injury or property damage including reasonable attorneys' fees and costs but excluding liability relating to any environmental contamination at the Property ("Damages"), that arise out of or in connection with the willful misconduct or negligence of Licensee, its agents, contractors, and/or subcontractors in entering upon or performing the Work on the Property. The indemnity obligation of the HCC hereunder shall be subject to the following conditions and limitations:

(i) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any proportionate share of Damages caused the negligence or willful misconduct of Licensor or any other third party other than Licensee's agents, contractors and subcontractors and the HCC shall not be liable and shall have no obligation to indemnify Licensor for losses due to interruptions of business or for any other form of incidental or consequential damages;

(ii) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any Damages that are not covered under or that exceed the specified limits and available proceeds of the commercial general liability insurance policy maintained by the HCC. Such insurance policy shall provide coverage in the aggregate amount of \$2,000,000, with a \$1,000,000 per occurrence limitation. Upon request, the HCC shall furnish Licensor proof of such insurance;

(iii) Licensor shall notify the HCC in writing promptly after Licensor obtains knowledge of the occurrence of any event or the existence of any facts which may become the basis of a claim by Licensor for indemnity pursuant to this section;

(iv) HCC and its agents, contractors, and subcontractors recognize that they are waiving immunity under Industrial Insurance Law, Title 51 RCW, and that this indemnification clause has been mutually negotiated;

(v) the individual members of the HCC shall under no circumstances be liable in any manner to Licensor for matters addressed by, relating to or arising from this Agreement and the provisions of this Section 3 shall be the sole and exclusive remedy of Licensor with respect to matters addressed by, relating to or arising from this Agreement. For purposes of the enforcement of this provision, the individual members of the HCC shall be

construed to be third party beneficiaries of this Agreement.

4. Interference with Licensor's Operations. All activity permitted by this temporary license shall be carried on in such a manner so as not to unduly interfere with Licensor's property and operations or its use of its facilities. Licensee's entry upon Licensor's property shall be coordinated with Licensor in such a way as to minimize such interference. Licensor shall provide the Licensee with any relevant health and safety information applicable to the property if required by Licensor for access. Licensor shall move non-fixed structures or machinery as needed for completion of the Work and shall provide necessary plant training and on-site escort to Licensee and its agents, contractors, and subcontractors if required by Licensor for access.

5. Sampling and Analysis. Licensor or its authorized representative shall have the right, at Licensor's expense, to take split samples of the shoreline (Event 1B) sampling completed on the Property provided enough sampling material is available. Licensor shall give the Licensee one week notice of the desired split sampling and shall cooperate fully in the coordination of the split sampling. Licensee shall have the right, at Licensee's expense, to obtain, within a reasonable period of time, copies of the results of any split samples taken by Licensor. Upon request, Licensor shall also have the right, at Licensor's expense, to obtain, within a reasonable period of time, copies of the sampling results from the Property. It shall be the sole responsibility of the Licensee to lawfully dispose of any material Licensee has gathered as part of the sampling process. Licensor shall have the same responsibility with respect to any split samples taken by Licensor.

6. Effective Date and Term of Agreement. This Agreement shall be effective upon signature by all parties and shall terminate upon receipt by the Licensee of notice that the Work has been completed to the satisfaction of the EPA or such earlier date as EPA may authorize. Licensee shall promptly notify Licensor of such notice. At the completion of the term of this temporary license, Licensee shall restore Licensor's property to a condition as near as possible to the condition of the property before the initiation of the work contemplated herein. Any monitoring equipment installed on the Property shall be removed in compliance with applicable rules and regulations.

7. Licensor's Warranty. Licensor represents and warrants that it is the owner of or otherwise has authority to grant access to the above described premises.

8. Applicable Law. The parties agree that, without respect to its conflict of laws jurisprudence, the laws of the State of Washington shall apply to this Agreement.

9. Recording. In order to ensure that subsequent purchasers have notice of this Agreement, Licensor hereby agrees to record this Agreement with the Pierce County Auditor and forward a conformed copy to the Licensee as set forth in Paragraph 2 of this Agreement. Upon receipt of written notice pursuant to Paragraph 6 of this Agreement of the termination of access granted hereunder, Licensor may, at Licensor's option and expense, cause such termination notice to be similarly recorded.

10. Parties Bound. This Agreement shall be binding upon the Parties, their heirs, successors and assigns.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this agreement as of the day and year opposite each party's signature.

HYLEBOS CLEANUP COMMITTEE

Date: 28 July 1994

By: 

LICENSOR

Date: May 25, 1994

By: 

For: Carl and Elaine Swindahl
Owner/Operator

Address: 2218 Marine View Drive
Tacoma, WA 98422

APPENDIX A

Shoreline Sampling, Event 1B: Collect samples from the shoreline of the Hylebos Waterway (0' to + 12' MLLW) to identify sediments or other materials which may be sources of chemicals or concern to waterway sediments, and also to identify sediment which may require remediation. The sampling will generally involve walking along the shoreline and collecting surface sediment from five to ten locations along each property. The sediment from each property will be composited and submitted for chemical analysis. Currently 63 shoreline composites, covering the entire shoreline, have been identified but not yet reviewed or accepted by EPA. In addition, five properties will have core samples drilled below the mudline in locations to be determined shortly. When they have been accepted by the EPA, the locations will be forwarded to all landowners.

Modutech Marine, Inc.

2218 Marine View Drive

Tacoma, WA 98422

Paul Fuglevand

HCC Project Manager

Dalton, Olmsted & Fuglevand

19017 - 120th Ave. N.E. #107

Bothell, WA 98011

RECEIVED
SEP 13 1994
SUPERFUND REMEDIAL BRANCH
DRAFT
9/4/94

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made between the Hylebos Cleanup Committee ("HCC" or "Licensee"), and the undersigned owner and/or operator ("Licensor") (collectively the "Parties").

WHEREAS, the HCC, consisting of the Port of Tacoma, Kaiser Aluminum & Chemical Corporation, ASARCO, Inc., Occidental Chemical Corporation, Elf ATOCHEM North America, Inc., and General Metals of Tacoma, Inc., was formed in order to perform pre-remedial design for the Hylebos Waterway located within the Commencement Bay/Near Shore Tidelands Superfund Site, and has entered into an Administrative Order on Consent with the United States Environmental Protection Agency ("EPA"), Docket No. 1093-07-03-104/122 ("AOC"), which includes a Statement of Work ("SOW"), requiring that certain work be performed in connection with the study of the Hylebos Waterway; and

WHEREAS, it will be necessary for Licensee and its collective agents, contractors and subcontractors to enter upon Licensor's property to conduct certain limited environmental work and for purposes of ingress and egress for such work. The work to be performed is set forth in Appendix A of this Agreement (the "Work") and shall not be performed upland of the "higher high water line"; and

WHEREAS, in order to allow the Work to take place, Licensor is willing to grant a temporary license for such entry to Licensee and its agents, contractors, and subcontractors and their consultants, subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties agree as follows:

1. Permission, Location and Access. Subject to the terms and conditions hereinafter set forth, Licensee and its agents, contractors, and subcontractors are granted a temporary license to enter upon Licensor's property, the legal description of which is as follows:

SEE ATTACHED

and any structures appurtenant thereto (the "Property") for purposes of conducting the Work in accordance with the schedule set forth in Table 1 of the SOW, as may be amended from time to time and for ingress and egress to perform the work. EPA and its designated representatives, the Washington State Department of Ecology and its designated representatives ("DOE"), and the

Commencement Bay Natural Resource Damage Trustees and their designated representatives, are granted a temporary license to the same extent for purposes of supervision of the Work. This temporary license in no way limits the authority of EPA and DOE under applicable federal or state laws to enter said property and to move freely about said property in accordance with such federal or state laws.

2. Entry Upon Property. Licensee and its agents, contractors, and subcontractors shall provide Licensor with at least two calendar weeks notice of the schedule of anticipated dates of access prior to the contemplated start date, and shall promptly notify Licensor of any modifications in the schedule. At least one week prior to each scheduled entry on the Property, Licensor shall provide Licensee with any relevant information regarding site conditions that could be impacted by the scheduled sampling, including, but not limited to, the presence of underground structures, utilities, and outfalls. Licensor will provide Licensee, within one calendar week of any request by Licensee, the known schedule of its shipping and berthing traffic on the Hylebos Waterway for the upcoming month. Any subsequent changes in the shipping and berthing schedule shall be provided to Licensee within 48 hours of receipt by Licensor. All notices to the Licensee shall be directed to:

Paul Fuglevand
HCC Project Manager
Dalton, Olmsted & Fuglevand
19017 120th Avenue N.E., Suite 107
Bothell, Washington 98011
Ph: (206) 486-7905
Fax: (206) 486-7651

All notices to the Licensor shall be directed to:

Name: BRETT JACOBSEN
Organization: MINTERCREEK DEVELOPMENT
Address: 4224 WALLER ROAD
TACOMA, WA 98443
Ph: (206) 922-6676
Fax: (206) 922-2676

On-site contact for the Licensor is:

Name: SAME AS ABOVE
Organization: _____
Address: _____
Ph: _____
Fax: _____

3. Liability. The HCC shall, under the terms and conditions set forth below, indemnify and hold harmless Licensor from and against any and all losses, expenses, costs, obligations, recoveries, liens, claims, demands or causes of action for death, personal injury or property damage including reasonable attorneys' fees and costs but excluding liability relating to any environmental contamination at the Property ("Damages"), that arise out of or in connection with the willful misconduct or negligence of Licensee, its agents, contractors, and/or subcontractors in entering upon or performing the Work on the Property. The indemnity obligation of the HCC hereunder shall be subject to the following conditions and limitations:

(i) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any proportionate share of Damages caused the negligence or willful misconduct of Licensor or any other third party other than Licensee's agents, contractors and subcontractors and the HCC shall not be liable and shall have no obligation to indemnify Licensor for losses due to interruptions of business or for any other form of incidental or consequential damages;

(ii) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any Damages that are not covered under or that exceed the specified limits and available proceeds of the commercial general liability insurance policy maintained by the HCC. Such insurance policy shall provide coverage in the aggregate amount of \$2,000,000, with a \$1,000,000 per occurrence limitation. Upon request, the HCC shall furnish Licensor proof of such insurance;

(iii) Licensor shall notify the HCC in writing promptly after Licensor obtains knowledge of the occurrence of any event or the existence of any facts which may become the basis of a claim by Licensor for indemnity pursuant to this section;

(iv) HCC and its agents, contractors, and subcontractors recognize that they are waiving immunity under Industrial Insurance Law, Title 51 RCW, and that this indemnification clause has been mutually negotiated;

(v) the individual members of the HCC shall under no circumstances be liable in any manner to Licensor for matters addressed by, relating to or arising from this Agreement and the provisions of this Section 3 shall be the sole and exclusive remedy of Licensor with respect to matters addressed by, relating to or arising from this Agreement. For purposes of the enforcement of this provision, the individual members of the HCC shall be

construed to be third party beneficiaries of this Agreement.

4. Interference with Licensor's Operations. All activity permitted by this temporary license shall be carried on in such a manner so as not to unduly interfere with Licensor's property and operations or its use of its facilities. Licensee's entry upon Licensor's property shall be coordinated with Licensor in such a way as to minimize such interference. Licensor shall provide the Licensee with any relevant health and safety information applicable to the property if required by Licensor for access. Licensor shall move non-fixed structures or machinery as needed for completion of the Work and shall provide necessary plant training and on-site escort to Licensee and its agents, contractors, and subcontractors if required by Licensor for access.

5. Sampling and Analysis. Licensor or its authorized representative shall have the right, at Licensor's expense, to take split samples of the shoreline (Event 1B) sampling completed on the Property provided enough sampling material is available. Licensor shall give the Licensee one week notice of the desired split sampling and shall cooperate fully in the coordination of the split sampling. Licensee shall have the right, at Licensee's expense, to obtain, within a reasonable period of time, copies of the results of any split samples taken by Licensor. Upon request, Licensor shall also have the right, at Licensor's expense, to obtain, within a reasonable period of time, copies of the sampling results from the Property. It shall be the sole responsibility of the Licensee to lawfully dispose of any material Licensee has gathered as part of the sampling process. Licensor shall have the same responsibility with respect to any split samples taken by Licensor.

6. Effective Date and Term of Agreement. This Agreement shall be effective upon signature by all parties and shall terminate upon receipt by the Licensee of notice that the Work has been completed to the satisfaction of the EPA or such earlier date as EPA may authorize. Licensee shall promptly notify Licensor of such notice. At the completion of the term of this temporary license, Licensee shall restore Licensor's property to a condition as near as possible to the condition of the property before the initiation of the work contemplated herein. Any monitoring equipment installed on the Property shall be removed in compliance with applicable rules and regulations.

7. Licensor's Warranty. Licensor represents and warrants that it is the owner of or otherwise has authority to grant access to the above described premises.

8. Applicable Law. The parties agree that, without respect to its conflict of laws jurisprudence, the laws of the State of Washington shall apply to this Agreement.

9. Recording. In order to ensure that subsequent purchasers have notice of this Agreement, Licensor hereby agrees to record this Agreement with the Pierce County Auditor and forward a conformed copy to the Licensee as set forth in Paragraph 2 of this Agreement. Upon receipt of written notice pursuant to Paragraph 6 of this Agreement of the termination of access granted hereunder, Licensor may, at Licensor's option and expense, cause such termination notice to be similarly recorded.

10. Parties Bound. This Agreement shall be binding upon the Parties, their heirs, successors and assigns.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this agreement as of the day and year opposite each party's signature.

HYLEBOS CLEANUP COMMITTEE

Date: 28 July 1994

By: 

LICENSOR

Date: _____

By:  5-13-94
GEN. PART.

For: MINTERCREEK DEVELOPMENT
Owner/Operator

Address: 4224 WALLER ROAD
TACOMA, WA 98443

APPENDIX A

Shoreline Sampling, Event 1B: Collect samples from the shoreline of the Hylebos Waterway (0' to + 12' MLLW) to identify sediments or other materials which may be sources of chemicals or concern to waterway sediments, and also to identify sediment which may require remediation. The sampling will generally involve walking along the shoreline and collecting surface sediment from five to ten locations along each property. The sediment from each property will be composited and submitted for chemical analysis. Currently 63 shoreline composites, covering the entire shoreline, have been identified but not yet reviewed or accepted by EPA. In addition, five properties will have core samples drilled below the mudline in locations to be determined shortly. When they have been accepted by the EPA, the locations will be forwarded to all landowners.

LEGAL DESCRIPTION

PARCEL A:

PORTION OF LOT 2, SECTION 26, TOWNSHIP 21 NORTH, RANGE 3 EAST OF THE W.M., IN PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE GOVERNMENT MEANDER LINE, SAID MEANDER LINE BEING THE SOUTH BOUNDARY OF LOT 2, WITH THE SOUTHEASTERLY LINE OF EAST 11TH STREET; THENCE NORTH $42^{\circ}44'$ EAST ALONG THE SAID SOUTHEASTERLY LINE OF EAST 11TH STREET FOR A DISTANCE OF 330 FEET; THENCE SOUTH $47^{\circ}16'$ EAST AND AT RIGHT ANGLE TO THE SOUTHEASTERLY LINE OF EAST 11TH STREET FOR A DISTANCE OF 360 FEET, MORE OR LESS, TO A POINT IN THE SOUTH LINE OF SAID LOT 2; THENCE NORTH $89^{\circ}32'$ WEST ALONG THE SAID SOUTH BOUNDARY LINE OF SAID LOT 2 FOR A DISTANCE OF 410 FEET, MORE OR LESS, TO A CORNER OF GOVERNMENT MEANDER LINE, SAID CORNER BEING IN THE SOUTH BOUNDARY LINE OF SAID LOT 2; THENCE NORTH $80^{\circ}33'$ WEST ALONG THE SAID GOVERNMENT MEANDER LINE 75.69 FEET TO THE PLACE OF BEGINNING.

EXCEPT THE NORTHEASTERLY 100 FEET THEREOF HERETOFORE CONVEYED TO CAMP MANUFACTURING COMPANY BY DEED RECORDED JULY 17, 1947 UNDER AUDITOR'S NO. 1455234, AND

EXCEPT THAT PORTION CONVEYED TO CLAYTON H. HARRIS BY DEED RECORDED JANUARY 6, 1965 UNDER AUDITOR'S NO. 2084604, DESCRIBED AS FOLLOWS:

THAT PORTION OF GOVERNMENT LOT 2, SECTION 26, TOWNSHIP 21 NORTH, RANGE 3 EAST OF THE W.M., IN PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE GOVERNMENT MEANDER LINE BEING THE SOUTHERLY BOUNDARY OF GOVERNMENT LOT 2, WITH THE SOUTHEASTERLY LINE OF EAST 11TH STREET, CITY OF TACOMA; THENCE NORTH $42^{\circ}44'$ EAST ALONG THE SOUTHEASTERLY LINE OF EAST 11TH STREET 35.88 FEET TO A LINE PARALLEL WITH AND 30 FEET NORTHERLY (MEASURED AT RIGHT ANGLES) TO SAID MEANDER LINE; THENCE ON SAID PARALLEL LINE SOUTH $80^{\circ}33'$ EAST AND SOUTH $64^{\circ}23'$ EAST TO THE LINE BETWEEN SAID GOVERNMENT LOT 2 AND GOVERNMENT LOT 4 OF SAID SECTION; THENCE ON SAID LINE NORTH $89^{\circ}32'$ WEST 71 FEET, MORE OR LESS, TO SAID MEANDER LINE; THENCE ON SAID MEANDER LINE NORTH $80^{\circ}33'$ WEST 75.69 FEET TO THE POINT OF BEGINNING.

AND EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTHEASTERLY LINE OF EAST 11TH STREET AND SOUTHERLY LINE OF GOVERNMENT LOT 2, SECTION 26, TOWNSHIP 21 NORTH, RANGE 3 EAST OF THE W.M., IN PIERCE COUNTY, WASHINGTON; THENCE NORTH $42^{\circ}44'$ EAST ALONG SAID SOUTHEASTERLY LINE OF EAST 11TH STREET, 216 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH $42^{\circ}44'$ EAST ALONG SAID SOUTHEASTERLY LINE OF EAST 11TH STREET, 14 FEET;

THENCE SOUTH 47°16' EAST 160 FEET; THENCE NORTHWESTERLY IN A STRAIGHT LINE TO A POINT WHICH IS SOUTH 47°16' EAST 26.5 FEET FROM THE POINT OF BEGINNING; THENCE NORTH 47°16' WEST 26.5 FEET TO THE POINT OF BEGINNING.

PARCEL B:

THAT PORTION OF GOVERNMENT LOT 4, SECTION 26, TOWNSHIP 21 NORTH, RANGE 3 EAST OF THE W.M., IN PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE GOVERNMENT MEANDER LINE, SAID MEANDER LINE BEING THE SOUTH BOUNDARY OF GOVERNMENT LOT 2, WITH THE SOUTHERLY LINE OF EAST 11TH STREET IN THE CITY OF TACOMA; THENCE NORTH 42°44' EAST ALONG THE SAID SOUTHEASTERLY LINE OF EAST 11TH STREET 230 FEET; THENCE SOUTH 47°16' EAST 270.63 FEET TO THE LINE BETWEEN GOVERNMENT LOT 2 AND GOVERNMENT LOT 4 OF SAID SECTION, BEING THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION; THENCE SOUTH 42°44' WEST 129 FEET, MORE OR LESS, TO A LINE PARALLEL WITH AND 30 FEET NORTHERLY (MEASURED AT RIGHT ANGLES) TO SAID MEANDER LINE; THENCE ON SAID PARALLEL LINE NORTH 38°12' WEST AND NORTH 64°23' WEST TO SAID LINE BETWEEN GOVERNMENT LOTS 2 AND 4; THENCE ON SAID LINE SOUTH 89°32' EAST 206 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

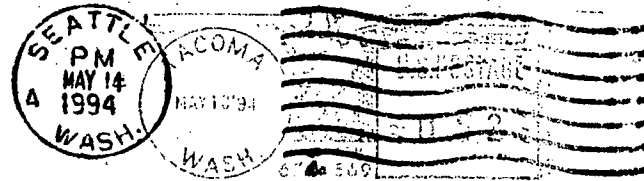
PARCEL C:

COMMENCING AT THE INTERSECTION OF THE SOUTHEASTERLY LINE OF EAST 11TH STREET AND THE SOUTHERLY LINE OF GOVERNMENT LOT 2, SECTION 26, TOWNSHIP 21 NORTH, RANGE 3 EAST OF THE W.M., IN PIERCE COUNTY, WASHINGTON; THENCE NORTH 42°44' EAST ALONG SAID SOUTHEASTERLY LINE OF EAST 11TH STREET, 230 FEET; THENCE SOUTH 47°16' EAST 270.63 FEET TO THE SOUTH LINE OF SAID GOVERNMENT LOT 2, BEING THE TRUE POINT OF BEGINNING; THENCE NORTH 47°16' WEST ALONG THE HEREINAFTER REFERRED TO LINE "X", A DISTANCE OF 80 FEET; THENCE SOUTH 89°32'32" EAST PARALLEL WITH THE SOUTH LINE OF SAID GOVERNMENT LOT 2 TO INTERSECT A LINE PARALLEL WITH AND WHICH IS NORTH 42°44' EAST 20 FEET DISTANT FROM THE ABOVE-MENTIONED LINE "X"; THENCE SOUTH 47°16' EAST ON SAID PARALLEL LINE 80 FEET TO THE SOUTH LINE OF SAID GOVERNMENT LOT 2; THENCE NORTH 89°32'32" WEST ALONG SAID SOUTH LINE TO THE TRUE POINT OF BEGINNING.

MINTERCREEK

DEVELOPMENT COMPANY

4224 WALLER ROAD
TACOMA, WASHINGTON 98443



PAUL FUGLEVAND
HCC PROJECT MANAGER
DALTON, OLMSTED & FUGLEVAND
19017 - 120TH AVENUE N.E., SUITE 107
BOTHELL, WA 98011



Louisiana-Pacific Corporation

Legal Department P.O. Box 4000-98 N. 13455 Government Way Hayden Lake, Idaho 83835
(208) 772-6011 Fax: (208) 772-1712

Anton C. Kirchhof / General Counsel
Christopher M. (Kit) Keyes / Assistant General Counsel
Bert P. Krages II
Christopher J. Biencourt
Douglas P. Anderson
Lauri A. Newton

July 8, 1994

BY FEDERAL EXPRESS

Peter J. Gutierrez
Morrison & Foerster
1191 Second Avenue
Suite 2200
Seattle, WA 98101

Re: **Hylebos Cleanup**

Dear Mr. Gutierrez:

Enclosed is the original Right of Entry Agreement signed by J. F. Ellisor, Controller of Operations. Please provide us with a fully executed copy after obtaining the signature of the Hylebos Cleanup Committee.

Thank you.

Very truly yours,

Peggy Johnson
For Lauri A. Newton

Enclosure

cc w/encl.: J. F. Ellisor
R. Curtis
C. Walden

RECEIVED

JUL 11 1994

PJG

RECEIVED
SEP 13 1994
SUPERFUND REMEDIAL BRANCH

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made between the Hylebos Cleanup Committee ("HCC" or "Licensee"), and the undersigned owner and/or operator ("Licensor") (collectively the "Parties").

WHEREAS, the HCC, consisting of the Port of Tacoma, Kaiser Aluminum & Chemical Corporation, ASARCO, Inc., Occidental Chemical Corporation, Elf ATOCHEM North America, Inc., and General Metals of Tacoma, Inc., was formed in order to perform pre-remedial design for the Hylebos Waterway located within the Commencement Bay/Near Shore Tideflats Superfund Site, and has entered into an Administrative Order on Consent with the United States Environmental Protection Agency ("EPA"), Docket No. 1093-07-03-104/122 ("AOC"), which includes a Statement of Work ("SOW"), requiring that certain work be performed in connection with the study of the Hylebos Waterway; and

WHEREAS, it will be necessary for Licensee and its collective agents, contractors and subcontractors to enter upon Licensor's property to conduct certain limited environmental work and for purposes of ingress and egress for such work. The work to be performed is set forth in Appendix A of this Agreement (the "Work") and shall not be performed upland of the "higher high water line"; and

WHEREAS, in order to allow the Work to take place, Licensor is willing to grant a temporary license for such entry to Licensee and its agents, contractors, and subcontractors and their consultants, subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties agree as follows:

1. Permission, Location and Access. Subject to the terms and conditions hereinafter set forth, Licensee and its agents, contractors, and subcontractors are granted a temporary license to enter upon Licensor's property, the legal description of which is as follows:

See Exhibit A attached and incorporated herein by this reference.

and any structures appurtenant thereto (the "Property") for purposes of conducting the Work in accordance with the schedule set forth in Table 1 of the SOW, as may be amended from time to time and for ingress and egress to perform the work. EPA and its designated representatives, the Washington State Department of Ecology and its designated representatives ("DOE"), and the Commencement Bay Natural Resource Damage Trustees and their

designated representatives, are granted a temporary license to the same extent for purposes of supervision of the Work. This temporary license in no way limits the authority of EPA and DOE under applicable federal or state laws to enter said property and to move freely about said property in accordance with such federal or state laws.

2. Entry Upon Property. Licensee and its agents, contractors, and subcontractors shall provide Licensor with at least two calendar weeks notice of the schedule of anticipated dates of access prior to the contemplated start date, and shall promptly notify Licensor of any modifications in the schedule. At least one week prior to each scheduled entry on the Property, Licensor shall provide Licensee with any relevant information regarding site conditions that could be impacted by the scheduled sampling, including, but not limited to, the presence of underground structures, utilities, and outfalls. Licensor will provide Licensee, within one calendar week of any request by Licensee, the known schedule of its shipping and berthing traffic on the Hylebos Waterway for the upcoming month. Any subsequent changes in the shipping and berthing schedule shall be provided to Licensee within 48 hours of receipt by Licensor. All notices to the Licensee shall be directed to:

Paul Fuglevand
HCC Project Manager
Dalton, Olmsted & Fuglevand
19017 120th Avenue N.E., Suite 107
Bothell, Washington 98011
Ph: (206) 486-7905
Fax: (206) 486-7651

All notices to the Licensor shall be directed to:

Name: R. D. Curtis, Plant Manager
Organization: Louisiana-Pacific Corporation
Address: 3701 Taylor Way, P.O. Box 1936
Tacoma, WA 98421
Ph: (206) 383-2424
Fax: (206) 272-7314

On-site contact for the Licensor is:

Name: R. D. Curtis, Plant Manager
Organization: Louisiana-Pacific Corporation
Address: 3701 Taylor Way, P.O. Box 1936
Tacoma, WA 98421
Ph: (206) 383-2424
Fax: (206) 272-7314

3. Liability. The HCC shall, under the terms and conditions set forth below, indemnify and hold harmless Licensor

from and against any and all losses, expenses, costs, obligations, recoveries, liens, claims, demands or causes of action for death, personal injury or property damage including reasonable attorneys' fees and costs but excluding liability relating to any environmental contamination at the Property ("Damages"), that arise out of or in connection with the willful misconduct or negligence of Licensee, its agents, contractors, and/or subcontractors in entering upon or performing the Work on the Property. The indemnity obligation of the HCC hereunder shall be subject to the following conditions and limitations:

(i) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any proportionate share of Damages caused by the negligence or willful misconduct of Licensor or any other third party other than Licensee's agents, contractors and subcontractors and the HCC shall not be liable and shall have no obligation to indemnify Licensor for losses due to interruptions of business or for any other form of incidental or consequential damages;

(ii) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any Damages that are not covered under or that exceed the specified limits and available proceeds of the commercial general liability insurance policy maintained by the HCC. Such insurance policy shall provide coverage in the aggregate amount of \$2,000,000, with a \$1,000,000 per occurrence limitation. Upon request, the HCC shall furnish Licensor proof of such insurance. Licensee shall maintain the insurance in full force and effect during the term of this Agreement and shall provide prior written notice to Licensor in the event of a material change in or cancellation or nonrenewal of the insurance policy. Should Licensee fail to obtain insurance upon nonrenewal or cancellation, this provision shall be subject to re-negotiation by the parties in order to effectuate the intent of this Section 3(ii);

(iii) Licensor shall notify the HCC in writing promptly after Licensor obtains knowledge of the occurrence of any event or the existence of any facts which may become the basis of a claim by Licensor for indemnity pursuant to this section;

(iv) HCC and its agents, contractors, and subcontractors recognize that they are waiving immunity under Industrial Insurance Law, Title 51 RCW, and that this indemnification clause has been mutually negotiated;

(v) the individual members of the HCC shall under no circumstances be liable in any manner to Licensor for

matters addressed by, relating to or arising from this Agreement and the provisions of this Section 3 shall be the sole and exclusive remedy of Licensor with respect to matters addressed by, relating to or arising from this Agreement. For purposes of the enforcement of this provision, the individual members of the HCC shall be construed to be third party beneficiaries of this Agreement.

4. Interference with Licensor's Operations. All activity permitted by this temporary license shall be carried on in such a manner so as not to unduly interfere with Licensor's property and operations or its use of its facilities. Licensee's entry upon Licensor's property shall be coordinated with Licensor in such a way as to minimize such interference. Licensor shall provide the Licensee with any relevant health and safety information applicable to the property if required by Licensor for access. Licensor shall move non-fixed structures or machinery as needed for completion of the Work and shall provide necessary plant training and on-site escort to Licensee and its agents, contractors, and subcontractors if required by Licensor for access.

5. Sampling and Analysis. Licensor or its authorized representative shall have the right, at Licensor's expense, to take split samples of sampling completed on the Property provided enough sampling material is available. Licensor shall give the Licensee one week notice of the desired split sampling and shall cooperate fully in the coordination of the split sampling. Licensee shall have the right, at Licensee's expense, to obtain, within a reasonable period of time, copies of the results of any split samples taken by Licensor. Upon request, Licensor shall also have the right, at Licensor's expense, to obtain, within a reasonable period of time, copies of the sampling results from the Property. It shall be the sole responsibility of the Licensee to lawfully dispose of any material Licensee has gathered as part of the sampling process. Licensor shall have the same responsibility with respect to any split samples taken by Licensor.

6. Effective Date and Term of Agreement. This Agreement shall be effective upon signature by all parties and shall terminate upon receipt by the Licensee of notice that the Work has been completed to the satisfaction of the EPA or such earlier date as EPA may authorize. Licensee shall promptly notify Licensor of such notice. At the completion of the term of this temporary license, Licensee shall restore Licensor's property to a condition as near as possible to the condition of the property before the initiation of the work contemplated herein.

7. Licensor's Warranty. Licensor represents and warrants that it is the owner of or otherwise has authority to grant access to the above described premises.

8. Applicable Law. The parties agree that, without respect to its conflict of laws jurisprudence, the laws of the State of Washington shall apply to this Agreement.

9. Recording. In order to ensure that subsequent purchasers have notice of this Agreement, Licensor hereby agrees to record this Agreement with the Pierce County Auditor and forward a conformed copy to the Licensee as set forth in Paragraph 2 of this Agreement. Upon receipt of written notice pursuant to Paragraph 6 of this Agreement of the termination of access granted hereunder, Licensor may, at Licensor's option and expense, cause such termination notice to be similarly recorded.

10. Parties Bound. This Agreement shall be binding upon the Parties, their heirs, successors and assigns.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this agreement as of the day and year opposite each party's signature.

HYLEBOS CLEANUP COMMITTEE

Date: 28 July 1994

By: 

LICENSOR

Date: July 8, 1994

By: 

CONTROLLER OF OPERATIONS

For: LOUISIANA-PACIFIC CORPORATION
Owner/Operator

Address: N. 13455 Government Way
Hayden Lake, ID 83835

APPENDIX A

Shoreline Sampling, Event 1B: Collect samples from the shoreline of the Hylebos Waterway (0' to + 12' MLLW) to identify sediments or other materials which may be sources of chemicals or concern to waterway sediments, and also to identify sediment which may require remediation. The sampling will generally involve walking along the shoreline and collecting surface sediment from five to ten locations along each property. The sediment from each property will be composited and submitted for chemical analysis. Currently 63 shoreline composites, covering the entire shoreline, have been identified but not yet reviewed or accepted by EPA. In addition, five properties will have core samples drilled below the mudline in locations to be determined shortly. When they have been accepted by the EPA, the locations will be forwarded to all landowners.

EXHIBIT A

PARCEL "A"

Commencing at the Southeast corner of Section 36, Township 21 North, Range 3 East of the Willamette Meridian; thence Westerly along the South line of said Section 36 a distance of 365.49 feet to the Northwestern right of way line of Hylebos Access Road; thence on an angle to the right of $128^{\circ}32'54''$; Northeasterly along the said right of way line a distance of 225.38 feet to the true point of beginning of this description; thence continuing Northeasterly along said right of way distance of 457.06 feet to the P.C. of a curve to the left having a radius of 904.93 feet; thence along said curve to the left through a central angle of $5^{\circ}00'36''$ a distance of 79.13 feet; then Northwesternly on a line parallel with and 100.00 feet measured at a right angle from the Southerly pierhead line of Hylebos Waterway extended Southeasterly, and also more or less along the center line of Hylebos Creek Channel as now located, to a point on the Easterly pierhead line of the Hylebos Waterway turning basin; thence on an angle to the left of 90° a distance of 100.00 feet along the said Easterly pierhead line to intersect the said Southerly pierhead line of said waterway; thence on an angle to the right of 90° along the said Southerly pierhead line a distance of 163.01 feet to a point on the South line of the Northwest quarter of the Southeast quarter of said Section 36; thence continuing Northwesternly along the Hylebos Waterway pierhead line a distance of 250.0 feet; thence on an angle to the left of 90° a distance of 815.94 feet to a point on the Northerly right of way line of Taylor Way; thence on an angle to the left of $91^{\circ}04'32''$ along the said right of way line distance of 1,226.11 feet to intersect a curve to the left having a radius of 348.27 feet, said radius point being on a angle to the left of $99^{\circ}57'44''$ from the said point of intersection; thence along said arc to the left through a central angle of $81^{\circ}48'$ a distance of 497.21 feet to the true point of beginning.

Situate in the City of Tacoma, County of Pierce and State of Washington.

PARCEL "B"

The North half of the North half of the Northeast quarter of the Southeast quarter of the Southeast quarter of Section 1, Township 20 North, Range 3 East of the Willamette Meridian.

EXCEPT the last 30 feet, the North 30 feet and the West 60 feet for roads.

Situate in the City of Fife, County of Pierce and State of Washington.

RECEIVED
SEP 13 1994
SUPERFUND REMEDIAL BRANCH
BOGLE & GATES

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made between the Hylebos Cleanup Committee ("HCC" or "Licensee"), and the undersigned owner and/or operator ("Licensor") (collectively the "Parties").

WHEREAS, the HCC, consisting of the Port of Tacoma, Kaiser Aluminum & Chemical Corporation, ASARCO, Inc., Occidental Chemical Corporation, Elf ATOCHEM North America, Inc., and General Metals of Tacoma, Inc., was formed in order to perform pre-remedial design for the Hylebos Waterway located within the Commencement Bay/Near Shore Tideflats Superfund Site, and has entered into an Administrative Order on Consent with the United States Environmental Protection Agency ("EPA"), Docket No. 1093-07-03-104/122 ("AOC"), which includes a Statement of Work ("SOW"), requiring that certain work be performed in connection with the study of the Hylebos Waterway; and

WHEREAS, it will be necessary for Licensee and its collective agents, contractors and subcontractors to enter upon Licensor's property to conduct certain limited environmental work and for purposes of ingress and egress for such work. The work to be performed is set forth in Appendix A of this Agreement (the "Work") and shall not be performed upland of the "higher high water line"; and

WHEREAS, in order to allow the Work to take place, Licensor is willing to grant a temporary license for such entry to Licensee and its agents, contractors, and subcontractors and their consultants, subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties agree as follows:

1. Permission, Location and Access. Subject to the terms and conditions hereinafter set forth, Licensee and its agents, contractors, and subcontractors are granted a temporary license to enter upon Licensor's property, the legal description of which is as follows:

THAT PORTION OF GOVERNMENT LOT 9, SECTION 26, TOWNSHIP 21 NORTH, RANGE 3 EAST OF THE W.M., LYING NORTHWESTERLY OF THE NORTHWESTERLY LINE OF LINCOLN AVENUE AND SOUTHWESTERLY OF THE SOUTHWESTERLY LINE OF HYLEBOS CREEK WATERWAY AND EASTERLY OF A LINE DRAWN N 1 DEGREE 27'35" EAST FROM A POINT ON THE SOUTH LINE OF SAID GOVERNMENT LOT 9, WHICH POINT IS 754 FEET FROM THE SOUTHEAST CORNER OF SAID LOT. EXCEPT
and any structures appurtenant thereto (the "Property") for TAYLOR purposes of conducting the Work in accordance with the schedule set forth in Table 1 of the SOW, as may be amended from time to time and for ingress and egress to perform the work. EPA and its designated representatives, the Washington State Department of Ecology and its designated representatives ("DOE"), and the Commencement Bay Natural Resource Damage Trustees and their WAY.

designated representatives, are granted a temporary license to the same extent for purposes of supervision of the Work. This temporary license in no way limits the authority of EPA and DOE under applicable federal or state laws to enter said property and to move freely about said property in accordance with such federal or state laws.

2. Entry Upon Property. Licensee and its agents, contractors, and subcontractors shall provide Licensors with at least two calendar weeks notice of the schedule of anticipated dates of access prior to the contemplated start date, and shall promptly notify Licensors of any modifications in the schedule. At least one week prior to each scheduled entry on the Property, Licensors shall provide Licensee with any relevant information regarding site conditions that could be impacted by the scheduled sampling, including, but not limited to, the presence of underground structures, utilities, and outfalls. Licensors will provide Licensee, within one calendar week of any request by Licensee, the known schedule of its shipping and berthing traffic on the Hylebos Waterway for the upcoming month. Any subsequent changes in the shipping and berthing schedule shall be provided to Licensee within 48 hours of receipt by Licensors. All notices to the Licensee shall be directed to:

Paul Fuglevand
HCC Project Manager
Dalton, Olmsted & Fuglevand
19017 120th Avenue N.E., Suite 107
Bothell, Washington 98011
Ph: (206) 486-7905
Fax: (206) 486-7651

All notices to the Licensors shall be directed to:

Name: JOE D. GUIZZETTI
Organization: BUFFELEN WOODWORKING CO.
Address: 1901 TAYLOR WAY
TACOMA, WASHINGTON 98421
Ph: (206) 627-1191
Fax: (206) 383-2060

On-site contact for the Licensors is:

Name: JOE D. GUIZZETTI
Organization: BUFFELEN WOODWORKING CO.
Address: 1901 TAYLOR WAY
TACOMA, WASHINGTON 98421
Ph: (206) 627-1191
Fax: (206) 383-2060

3. Liability. The HCC shall, under the terms and conditions set forth below, indemnify and hold harmless Licensors

from and against any and all losses, expenses, costs, obligations, recoveries, liens, claims, demands or causes of action for death, personal injury or property damage including reasonable attorneys' fees and costs but excluding liability relating to any environmental contamination at the Property ("Damages"), that arise out of or in connection with the willful misconduct or negligence of Licensee, its agents, contractors, and/or subcontractors in entering upon or performing the Work on the Property. The indemnity obligation of the HCC hereunder shall be subject to the following conditions and limitations:

(i) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any proportionate share of Damages caused by the negligence or willful misconduct of Licensor or any other third party other than Licensee's agents, contractors and subcontractors and the HCC shall not be liable and shall have no obligation to indemnify Licensor for losses due to interruptions of business or for any other form of incidental or consequential damages;

(ii) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any Damages that are not covered under or that exceed the specified limits and available proceeds of the commercial general liability insurance policy maintained by the HCC. Such insurance policy shall provide coverage in the aggregate amount of \$2,000,000, with a \$1,000,000 per occurrence limitation. Upon request, the HCC shall furnish Licensor proof of such insurance. Licensee shall maintain the insurance in full force and effect during the term of this Agreement and shall provide prior written notice to Licensor in the event of a material change in or cancellation or nonrenewal of the insurance policy. Should Licensee fail to obtain insurance upon nonrenewal or cancellation, this provision shall be subject to renegotiation by the parties in order to effectuate the intent of this Section 3(ii);

(iii) Licensor shall notify the HCC in writing promptly after Licensor obtains knowledge of the occurrence of any event or the existence of any facts which may become the basis of a claim by Licensor for indemnity pursuant to this section;

(iv) HCC and its agents, contractors, and subcontractors recognize that they are waiving immunity under Industrial Insurance Law, Title 51 RCW, and that this indemnification clause has been mutually negotiated;

(v) the individual members of the HCC shall under no circumstances be liable in any manner to Licensor for

matters addressed by, relating to or arising from this Agreement and the provisions of this Section 3 shall be the sole and exclusive remedy of Licensor with respect to matters addressed by, relating to or arising from this Agreement. For purposes of the enforcement of this provision, the individual members of the HCC shall be construed to be third party beneficiaries of this Agreement.

4. Interference with Licensor's Operations. All activity permitted by this temporary license shall be carried on in such a manner so as not to unduly interfere with Licensor's property and operations or its use of its facilities. Licensee's entry upon Licensor's property shall be coordinated with Licensor in such a way as to minimize such interference. Licensor shall provide the Licensee with any relevant health and safety information applicable to the property if required by Licensor for access. Licensor shall move non-fixed structures or machinery as needed for completion of the Work and shall provide necessary plant training and on-site escort to Licensee and its agents, contractors, and subcontractors if required by Licensor for access.

5. Sampling and Analysis. Licensor or its authorized representative shall have the right, at Licensor's expense, to take split samples of sampling completed on the Property provided enough sampling material is available. Licensor shall give the Licensee one week notice of the desired split sampling and shall cooperate fully in the coordination of the split sampling. Licensee shall have the right, at Licensee's expense, to obtain, within a reasonable period of time, copies of the results of any split samples taken by Licensor. Upon request, Licensor shall also have the right, at Licensor's expense, to obtain, within a reasonable period of time, copies of the sampling results from the Property. It shall be the sole responsibility of the Licensee to lawfully dispose of any material Licensee has gathered as part of the sampling process. Licensor shall have the same responsibility with respect to any split samples taken by Licensor.

6. Effective Date and Term of Agreement. This Agreement shall be effective upon signature by all parties and shall terminate upon receipt by the Licensee of notice that the Work has been completed to the satisfaction of the EPA or such earlier date as EPA may authorize. Licensee shall promptly notify Licensor of such notice. At the completion of the term of this temporary license, Licensee shall restore Licensor's property to a condition as near as possible to the condition of the property before the initiation of the work contemplated herein.

7. Licensor's Warranty. Licensor represents and warrants that it is the owner of or otherwise has authority to grant access to the above described premises.

8. Applicable Law. The parties agree that, without respect to its conflict of laws jurisprudence, the laws of the State of Washington shall apply to this Agreement.

9. Recording. In order to ensure that subsequent purchasers have notice of this Agreement, Licensor hereby agrees to record this Agreement with the Pierce County Auditor and forward a conformed copy to the Licensee as set forth in Paragraph 2 of this Agreement. Upon receipt of written notice pursuant to Paragraph 6 of this Agreement of the termination of access granted hereunder, Licensor may, at Licensor's option and expense, cause such termination notice to be similarly recorded.

10. Parties Bound. This Agreement shall be binding upon the Parties, their heirs, successors and assigns.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this agreement as of the day and year opposite each party's signature.

HYLEBOS CLEANUP COMMITTEE

Date: 28 July 1994

By: 

LICENSOR

Date: _____

By: 

JOE D. GUIZZETTI, G.M. & CEO
For: BUFFELEN WOODWORKING CO.
Owner/Operator

Address: 1901 TAYLOR WAY
TACOMA, WASHINGTON 98421

APPENDIX A

Shoreline Sampling, Event 1B: Collect samples from the shoreline of the Hylebos Waterway (0' to + 12' MLLW) to identify sediments or other materials which may be sources of chemicals or concern to waterway sediments, and also to identify sediment which may require remediation. The sampling will generally involve walking along the shoreline and collecting surface sediment from five to ten locations along each property. The sediment from each property will be composited and submitted for chemical analysis. Currently 63 shoreline composites, covering the entire shoreline, have been identified but not yet reviewed or accepted by EPA. In addition, five properties will have core samples drilled below the mudline in locations to be determined shortly. When they have been accepted by the EPA, the locations will be forwarded to all landowners.



**BUFFELEN
WOODWORKING®**

1901 TAYLOR WAY
P.O. BOX 1383
TACOMA, WA 98401

TO

BOGLE & GATES
TWO UNION SQUARE
601 UNION STREET
SEATTLE, WASHINGTON 98101-2346

ATTENTION: LEONARD H. SORRIN

RECEIVED

JUL 22 1994

BOGLE & GATES



Law Department
Tacoma, Washington 98477
Air Express:
33663 Weyerhaeuser Way South
Federal Way, Washington 98003
Writers Direct Dial Number
Tel(206)924-3440
Fax(206)924-3253

RECEIVED

JUL 19 1994

BOGLE & GATES

July 16, 1994

RECEIVED
SEP 13 1994
SUPERFUND REMEDIAL BRANCH

VIA FACSIMILE AND U.S. MAIL

Tod A. Gold
Assistant General Counsel
U. S. Environmental Protection Agency, Region 10
1200 Sixth Avenue
Seattle, Washington 98101

Re: Commencement Bay Nearshore/Tideflats Superfund Site
Site Access Agreement

Dear Mr. Gold:

Enclosed is the executed Consent to Access to Property permitting EPA and the HCC to enter Weyerhaeuser's Tacoma Export Facility. The anticipated shipping schedule for the facility during the next three weeks is as follows:

- July 18 to July 20, 1994 - No traffic expected
- July 21 to July 23, 1994 - Vessel loading
- July 25 to July 29, 1994 - Vessels loading
- August 1 to August 7, 1994 - No traffic expected

Also enclosed is a copy of the safety requirements germane to visitors at Weyerhaeuser's Tacoma Export Facility. In general, visitors are expected to:

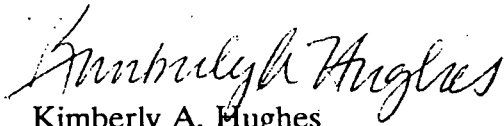
- Wear hard hats, florescent vests or jackets, and safety shoes while on site;
- Use safety glasses in designated areas; and
- Wear hearing protection while in the debarker area.

In addition, visitors must be accompanied by an escort at all times. Please contact John Gross at (206)924-4190 or me at (206)924-3440 to schedule site access and to

Tod A. Gold
July 16, 1994
Page - 2 -

arrange for a Health and Safety briefing in accordance with the terms of the access agreement.

Very truly yours,


Kimberly A. Hughes
Attorney

Enclosures

cc: Kevin Godbout - CH 1L28
John Gross - CH 1K29
Allison Hiltner - Site Manager, Superfund Remediation Branch, EPA
Len Sorrin - Bogle & Gates

t:\hughk\cercla\gold.101

CONSENT TO ACCESS TO PROPERTY

Owner Name: Weyerhaeuser Company

Real Property Address: Tacoma Log Export Facility
3401 Taylor Way
Tacoma, Washington 98421

Weyerhaeuser Company ("Owner") hereby consents to entry and continued access to property owned and controlled by it, as more specifically described in Attachment "A" to this Agreement, by officers, employees, and authorized representatives of the United States Environmental Protection Agency ("U.S. EPA"), and members, employees, and authorized representatives of the Hylebos Cleanup Committee ("HCC"). The HCC is performing Pre-Remedial Design Activities under Administrative Order on Consent (USEPA Docket No. 1093-07-06-104/22) with U.S. EPA, for the following purposes:

To complete those tasks required for Pre-Remedial Design Activities of the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore/Tideflats Site ("Site"), which may include, but are not limited to, the following:

- to conduct geophysical, bathymetric or intertidal bank surveys;
- to collect such soil, intertidal or marine sediment, surface water, groundwater and air samples, and take such photographs or other visual observations as may be determined to be necessary for pre-remedial design purposes;
- to perform such tests or studies as needed to evaluate the effectiveness of source control measures;
- to perform studies or measurements as needed to determine the applicability of different technology options for sediment disposal or source control effectiveness.

Owner also consents to entry and continued access to officers, employees and authorized representatives of the Washington Department of Ecology ("Ecology") and the Natural Resource Trustees for the Purposes of overseeing Pre-Remedial Design Activities.

Weyerhaeuser acknowledges that the actions of U.S. EPA under this Agreement are undertaken pursuant to its response and enforcement responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act (Superfund), 42 U.S.C. §6901 et. seq.

Owner will, to the best of its ability, take such efforts as may be reasonably necessary to ensure that its operations on the real property do not (1) impair the activities of the HCC or EPA under this Agreement or (2) obstruct access to the real property of third parties.

Owner's consent to entry onto the property is conditioned upon the following terms:

- for the testing scheduled to begin on July 18, 1994, the receipt of at least two (2) days' notice of the schedule of anticipated dates when access will be necessary. For testing conducted subsequent to July 25, 1994, the receipt of at least five (5) days' notice of the schedule of anticipated dates when access will be necessary;
- all activities conducted under this Agreement must be carried out in a manner that does not unduly interfere with the Owner's operations on and uses of the property. Owner agrees to provide EPA and the HCC with an expected schedule for shipping activity at the property on a monthly basis;
- prior to entering the property, EPA or the HCC shall arrange for their officers, members, employees, agents, and representatives that will require access to the property to complete Owner's Health and Safety Training program at which Owner shall provide relevant health and safety information to be followed.

Owner is entitled to obtain a split sample of material sampled on the property. Owner agrees to provide U.S. EPA with four (4) days' advance notice of its desire to obtain split samples and shall cooperate in the coordination of the split sampling. Owner agrees to provide U.S. EPA with a copy of the written reports of the split sampling.

Upon Owner's request EPA and/or the HCC shall provide a copy of the written reports of sampling taken under the authority of this agreement. Owner shall to pay a reasonable fee to cover the cost of copying documents containing the results of sampling.

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///

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This Agreement shall terminate (1) thirty (30) days' after notice by Owner of its revocation of consent to access for cause or (2) when the work required under Administrative Order on Consent, USEPA Docket No. 1093-07-06-104/22 has been completed by the HCC.

DATED THIS 16th day of July, 1994.

WEYERHAEUSER COMPANY

by: *Kimberly A. Hughes*
Title: *Attorney Law Dept.*

t:\hughk\cercla\access.d01

ATTACHMENT A

ATTACHMENT A

A portion of the Southeast quarter of the Northwest quarter and the Northeast quarter of the Southwest quarter and the West half of the Southeast quarter of Section 36, Township 21 North, Range 3 East of the Willamette Meridian and more particularly described as follows:

Commencing at the Northwest corner of the Northeast quarter of the Southwest quarter of said Section 36; thence South $89^{\circ}13'41''$ East along the North line of said subdivision for a distance of 800.00 feet to the point of beginning; thence North $01^{\circ}17'50''$ East parallel with the West line of the Southeast quarter of the Northwest quarter of said Section 36 for a distance of 228.30 feet to the Government pierhead line of Hylebos Waterway; thence South $48^{\circ}15'35''$ East along said pierhead line for a distance of 1706.85 feet to a point 623.00 feet North $48^{\circ}15'35''$ West and 68.30 feet South $89^{\circ}13'59''$ West from the Northeast corner of the Southwest quarter of the Southeast quarter of said Section 36, said 68.30 feet measured along the North line of said subdivision; thence South $41^{\circ}44'25''$ West for a distance of 822.86 feet to the Northerly right-of-way line of Taylor Way; thence North $49^{\circ}19'39''$ West along said right-of-way line for a distance of 995.56 feet to the intersection with a line parallel with the West line of the Northeast quarter of the Southwest quarter and 800.00 feet East of said West line, as measured along the North line of said subdivision; thence North $01^{\circ}34'59''$ East along said parallel line for a distance of 873.59 feet to the point of beginning. All encompassing an area of 25.88 acres more or less.

SUBJECT to easement granted to the Port of Tacoma recorded under Pierce County Auditor's Fee #1865190.



Tacoma Export Facility
3401 Taylor Way East
Tacoma, Washington 98421
Tel (206) 924 7920

SEPTEMBER 2, 1992

TO OUR VALUED CUSTOMERS:

ATTACHED ARE SOME PROVISIONS WE HAVE MADE IN REGARD TO INSURING A
SAFE ENVIRONMENT FOR ALL PERSONS VISITING WEYERHAEUSER SORT YARDS.
PLEASE TAKE A MOMENT TO LOOKOVER THE REQUIREMENTS FOR EACH OF THE AREAS:
THE TACOMA EXPORT FACILITY, THE SMITH ISLAND LOG YARD, AND THE VAIL LOG
YARD. YOUR COMPLIANCE WITH THESE PROCEDURES WILL HELP US PROVIDE FOR
THE SAFETY OF ALL VISITORS.

THANK YOU FOR YOUR HELP AND COOPERATION.

SINCERELY,

A handwritten signature in cursive script, reading "R.W. McLean".

R.W. MCLEAN

CC:ELMS GROUP

**TACOMA EXPORT FACILITY
VISITOR CONDUCT EXPECTATIONS**

Visitors to the Tacoma Export Facility are always welcome. To insure safety for all visitors and our employees, visitors must comply with the following safety requirements:

- * Vehicles must follow the traffic pattern.
- * Report to the office for authorization to enter the log sorting or storage areas.
- * Hard hats must be worn at all times in all areas of log yard, shop and log boom.
- * High visibility vests or raincoats must be worn at all times while in the log sorting or storage areas.
- * Caulked shoes or Korkers and life vests must be worn while on log boom or rafts.
- * Log decks must be inspected from the ground. Climbing on log decks is prohibited.
- * No admittance to the log yard or storage areas unless Weyerhaeuser personnel are present on site or arrangements are made in advance for security personnel to be present.

The required personal protective equipment is available for your use and can be obtained in the office. Thank you for your cooperation in maintaining a safe work environment.

TACOMA EXPORT FACILITY

SAFETY RULES

JANUARY 1993

- * Foot traffic in the yard to be announced by radio - location and number of people.
- * Auto and delivery vehicles to be announced by radio (route and destination) and clearance approved before entering the yard.
- * Log truck drivers to be familiar with rules regarding truck route, wrapper racks, and unloading procedures.
- * Blow horn to alert scalers when hauling loads by scaling bunks.
- * Stacker and sorter operators call barker operator when pulling logs away from #1 or #2 sortline bunks --- wait for response.
- * Do not leave conveyors or barkers running when out of the sortline or barker cabs.
- * Follow lock-out/tag-out procedures when working on equipment (hog, conveyors, etc.).
- * Wear safety harness when working on top of hog or on top of bark bins.
- * Wear hard hats when out of machine cabs or debarker cabs.
- * Report all unsafe acts or conditions to your supervisor.
- * Maintenance crews will have exclusive use of radio frequency when working on equipment where radio communications are necessary. Maintenance crews will inform the yard personnel and longshoremen whenever necessary.
- * Personal protective equipment required in the yard.
- * Smoking allowed in designated areas only.



Tacoma, Washington 98477

FIRST CLASS MAIL

Leonard H. Sorrin, Esq.
Bogle & Gates
5100 Two Union Square
601 Union Street
Seattle, WA 98101

RECEIVED
JUL 19 1988
BOGLE & GATES

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1201 THIRD AVENUE, 40TH FLOOR • SEATTLE, WASHINGTON 98101-3099
(206) 583-8888 • FACSIMILE (206) 583-8500

Sorin
RECEIVED

MAY 27 1994

BOGLE & GATES

May 26, 1994

RECEIVED
SEP 13 1994
SUPERFUND REMEDIAL BRANCH

Leonard H. Sorrin
Bogle & Gates
Two Union Square
601 Union Street
Seattle, WA 98101-2346

Re: Hylebos Right of Entry Agreement

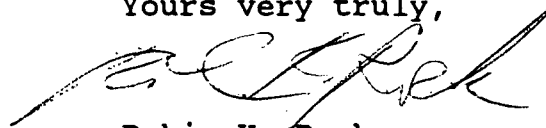
Dear Len:

Enclosed are two original executed Right of Entry Agreements between the Hylebos Clean Up Committee and PRI Northwest, Inc. As you can see, we have modified paragraph four to strike the language regarding the moving of non-fixed structures or machinery as needed for completion of the work. I think this modification satisfies both of our clients' needs given the scope of the sampling at the site and the location of the barge.

However, if this is not acceptable, we would be happy to discuss other ways of handling this modification.

If this agreement is acceptable, please return one of the executed copies for our files. Please call me if you have any questions.

Yours very truly,



Robin K. Rock

RKR:slp
cc: George Aoki
Enclosures

[00000-0000/SL941460.159]

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made between the Hylebos Cleanup Committee ("HCC" or "Licensee"), and the undersigned owner and/or operator ("Licensor") (collectively the "Parties").

WHEREAS, the HCC, consisting of the Port of Tacoma, Kaiser Aluminum & Chemical Corporation, ASARCO, Inc., Occidental Chemical Corporation, Elf ATOCHEM North America, Inc., and General Metals of Tacoma, Inc., was formed in order to perform pre-remedial design for the Hylebos Waterway located within the Commencement Bay/Near Shore Tideflats Superfund Site, and has entered into an Administrative Order on Consent with the United States Environmental Protection Agency ("EPA"), Docket No. 1093-07-03-104/122 ("AOC"), which includes a Statement of Work ("SOW"), requiring that certain work be performed in connection with the study of the Hylebos Waterway; and

WHEREAS, it will be necessary for Licensee and its collective agents, contractors and subcontractors to enter upon Licensor's property to conduct certain limited environmental work and for purposes of ingress and egress for such work. The work to be performed is set forth in Appendix A of this Agreement (the "Work") and shall not be performed upland of the "higher high water line"; and

WHEREAS, in order to allow the Work to take place, Licensor is willing to grant a temporary license for such entry to Licensee and its agents, contractors, and subcontractors and their consultants, subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties agree as follows:

1. Permission, Location and Access. Subject to the terms and conditions hereinafter set forth, Licensee and its agents, contractors, and subcontractors are granted a temporary license to enter upon Licensor's property, the legal description of which is as follows:

(See attached Exhibit A)

and any structures appurtenant thereto (the "Property") for purposes of conducting the Work in accordance with the schedule set forth in Table 1 of the SOW, as may be amended from time to time and for ingress and egress to perform the work. EPA and its designated representatives, the Washington State Department of Ecology and its designated representatives ("DOE"), and the

Commencement Bay Natural Resource Damage Trustees and their designated representatives, are granted a temporary license to the same extent for purposes of supervision of the Work. This temporary license in no way limits the authority of EPA and DOE under applicable federal or state laws to enter said property and to move freely about said property in accordance with such federal or state laws.

2. Entry Upon Property. Licensee and its agents, contractors, and subcontractors shall provide Licensor with at least two calendar weeks notice of the schedule of anticipated dates of access prior to the contemplated start date, and shall promptly notify Licensor of any modifications in the schedule. At least one week prior to each scheduled entry on the Property, Licensor shall provide Licensee with any relevant information regarding site conditions that could be impacted by the scheduled sampling, including, but not limited to, the presence of underground structures, utilities, and outfalls. Licensor will provide Licensee, within one calendar week of any request by Licensee, the known schedule of its shipping and berthing traffic on the Hylebos Waterway for the upcoming month. Any subsequent changes in the shipping and berthing schedule shall be provided to Licensee within 48 hours of receipt by Licensor. All notices to the Licensee shall be directed to:

Paul Fuglevand
HCC Project Manager
Dalton, Olmsted & Fuglevand
19017 120th Avenue N.E., Suite 107
Bothell, Washington 98011
Ph: (206) 486-7905
Fax: (206) 486-7651

All notices to the Licensor shall be directed to:

Name: George T. Aoki
Organization: PRI NORTHWEST, INC.
Address: 733 Bishop Street, 28th Floor
Honolulu, HI 96813
Ph: (808) 547-3282
Fax: (808) 547-3014

On-site contact for the Licensor is:

Name: Richard F. Moore
Organization: HART CROWSER, INC.
Address: 1910 Fairview Avenue East
Seattle, WA 98102-3699
Ph: (206) 324-9530
Fax: (206) 328-5581

3. Liability. The HCC shall, under the terms and conditions set forth below, indemnify and hold harmless Licensor from and against any and all losses, expenses, costs, obligations, recoveries, liens, claims, demands or causes of action for death, personal injury or property damage including reasonable attorneys' fees and costs but excluding liability relating to any environmental contamination at the Property ("Damages"), that arise out of or in connection with the willful misconduct or negligence of Licensee, its agents, contractors, and/or subcontractors in entering upon or performing the Work on the Property. The indemnity obligation of the HCC hereunder shall be subject to the following conditions and limitations:

(i) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any proportionate share of Damages caused the negligence or willful misconduct of Licensor or any other third party other than Licensee's agents, contractors and subcontractors and the HCC shall not be liable and shall have no obligation to indemnify Licensor for losses due to interruptions of business or for any other form of incidental or consequential damages;


(ii) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any Damages that are not covered under or that exceed the specified limits and available proceeds of the commercial general liability insurance policy maintained by the HCC. Such insurance policy shall provide coverage in the aggregate amount of \$2,000,000, with a \$1,000,000 per occurrence limitation. Upon request, the HCC shall furnish Licensor proof of such insurance;

(iii) Licensor shall notify the HCC in writing promptly after Licensor obtains knowledge of the occurrence of any event or the existence of any facts which may become the basis of a claim by Licensor for indemnity pursuant to this section;

(iv) HCC and its agents, contractors, and subcontractors recognize that they are waiving immunity under Industrial Insurance Law, Title 51 RCW, and that this indemnification clause has been mutually negotiated;

(v) the individual members of the HCC shall under no circumstances be liable in any manner to Licensor for matters addressed by, relating to or arising from this Agreement and the provisions of this Section 3 shall be the sole and exclusive remedy of Licensor with respect to matters addressed by, relating to or arising from this Agreement. For purposes of the enforcement of this provision, the individual members of the HCC shall be

construed to be third party beneficiaries of this Agreement.

4. Interference with Licensors Operations. All activity permitted by this temporary license shall be carried on in such a manner so as not to unduly interfere with Licensor's property and operations or its use of its facilities. Licensee's entry upon Licensor's property shall be coordinated with Licensor in such a way as to minimize such interference. Licensor shall provide the Licensee with any relevant health and safety information applicable to the property if required by Licensor for access. Licensor ~~shall move non-fixed structures or machinery as needed for completion of the Work~~ and shall provide necessary plant training and on-site escort to Licensee and its agents, contractors, and subcontractors if required by Licensor for access. 

5. Sampling and Analysis. Licensor or its authorized representative shall have the right, at Licensor's expense, to take split samples of the shoreline (Event 1B) sampling completed on the Property provided enough sampling material is available. Licensor shall give the Licensee one week notice of the desired split sampling and shall cooperate fully in the coordination of the split sampling. Licensee shall have the right, at Licensee's expense, to obtain, within a reasonable period of time, copies of the results of any split samples taken by Licensor. Upon request, Licensor shall also have the right, at Licensor's expense, to obtain, within a reasonable period of time, copies of the sampling results from the Property. It shall be the sole responsibility of the Licensee to lawfully dispose of any material Licensee has gathered as part of the sampling process. Licensor shall have the same responsibility with respect to any split samples taken by Licensor.

6. Effective Date and Term of Agreement. This Agreement shall be effective upon signature by all parties and shall terminate upon receipt by the Licensee of notice that the Work has been completed to the satisfaction of the EPA or such earlier date as EPA may authorize. Licensee shall promptly notify Licensor of such notice. At the completion of the term of this temporary license, Licensee shall restore Licensor's property to a condition as near as possible to the condition of the property before the initiation of the work contemplated herein. Any monitoring equipment installed on the Property shall be removed in compliance with applicable rules and regulations.

7. Licensors Warranty. Licensor represents and warrants that it is the owner of or otherwise has authority to grant access to the above described premises.

8. Applicable Law. The parties agree that, without respect to its conflict of laws jurisprudence, the laws of the State of Washington shall apply to this Agreement.

9. Recording. In order to ensure that subsequent purchasers have notice of this Agreement, Licensors hereby agree to record this Agreement with the Pierce County Auditor and forward a conformed copy to the Licensee as set forth in Paragraph 2 of this Agreement. Upon receipt of written notice pursuant to Paragraph 6 of this Agreement of the termination of access granted hereunder, Licensors may, at Licensors' option and expense, cause such termination notice to be similarly recorded.

10. Parties Bound. This Agreement shall be binding upon the Parties, their heirs, successors and assigns.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this agreement as of the day and year opposite each party's signature.

HYLEBOS CLEANUP COMMITTEE

Date: 28 July 1994

By: 

LICENSOR

Date: MAY 25, 1994

By: 

For: PRI NORTHWEST, INC.
Owner/Operator

Address: 733 Bishop Street, 28th Floor
Honolulu, HI 96813

APPENDIX A

Shoreline Sampling, Event 1B: Collect samples from the shoreline of the Hylebos Waterway (0' to + 12' MLLW) to identify sediments or other materials which may be sources of chemicals or concern to waterway sediments, and also to identify sediment which may require remediation. The sampling will generally involve walking along the shoreline and collecting surface sediment from five to ten locations along each property. The sediment from each property will be composited and submitted for chemical analysis. Currently 63 shoreline composites, covering the entire shoreline, have been identified but not yet reviewed or accepted by EPA. In addition, five properties will have core samples drilled below the mudline in locations to be determined shortly. When they have been accepted by the EPA, the locations will be forwarded to all landowners.

EXHIBIT A

Order No. 313032

D-E-S-C-R-I-P-T-I-O-N

PARCEL "A":

All of that portion of Block 11 of "STATE LAND COMMISSIONER'S REPLAT OF BLOCKS 13 to 48 both inclusive, TACOMA TIDELANDS, formerly in King County, commonly known as ASHTON'S REPLAT", according to Plat filed for recorded December 23, 1918 in the office of the County Auditor, described as follows:
Beginning at the most Northerly corner of Block 11; thence running South 42°44'24" West along the Northwesternly line of said Block, 910.00 feet to the Northeasterly line of Alexander Avenue as now established, being 40.00 feet North 42°44'24" East from the original corner of said Block 11; thence South 47°15'36" East along said Northeasterly line 200.00 feet; thence North 42°44'24" East 959.516 feet to the Northeasterly line of said Block; thence North 69°23' West 131.481 feet; thence North 47°15'36" West 78.199 feet to the point of beginning, in Tacoma, Pierce County, Washington.

PARCEL "B":

Commencing at the most Northerly corner of Block 11 of "STATE LAND COMMISSIONER'S REPLAT OF BLOCKS 13 to 48 both inclusive, TACOMA TIDELANDS, formerly in King County, commonly known as ASHTON'S REPLAT", according to Plat filed for recorded December 23, 1918 in the office of the County Auditor; thence running South 42°44'24" West along the Northwesternly line of said Block, 910.00 feet to the Northeasterly line of Alexander Avenue as now established, being 40.00 feet North 42°44'24" East from the original corner of said Block 11; thence South 47°15'36" East along said Northeasterly line 200.00 feet to the true point of beginning; thence North 42°44'24" East 38.40 feet; thence South 47°15'36" East 25.60 feet; thence South 42°44'24" West 21.30 feet; thence South 47°15'36" East 12.60 feet; thence South 42°44'24" West 17.10 feet to the Northerly line of Alexander Avenue; thence North 47°15'36" West to the true point of beginning, in Tacoma, Pierce County, Washington.

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made between the Hylebos Cleanup Committee ("HCC" or "Licensee"), and the undersigned owner and/or operator ("Licensor") (collectively the "Parties").

WHEREAS, the HCC, consisting of the Port of Tacoma, Kaiser Aluminum & Chemical Corporation, ASARCO, Inc., Occidental Chemical Corporation, Elf ATOCHEM North America, Inc., and General Metals of Tacoma, Inc., was formed in order to perform pre-remedial design for the Hylebos Waterway located within the Commencement Bay/Near Shore Tideflats Superfund Site, and has entered into an Administrative Order on Consent with the United States Environmental Protection Agency ("EPA"), Docket No. 1093-07-03-104/122 ("AOC"), which includes a Statement of Work ("SOW"), requiring that certain work be performed in connection with the study of the Hylebos Waterway; and

WHEREAS, it will be necessary for Licensee and its collective agents, contractors and subcontractors to enter upon Licensor's property to conduct certain limited environmental work and for purposes of ingress and egress for such work. The work to be performed is set forth in Appendix A of this Agreement (the "Work") and shall not be performed upland of the "higher high water line"; and

WHEREAS, in order to allow the Work to take place, Licensor is willing to grant a temporary license for such entry to Licensee and its agents, contractors, and subcontractors and their consultants, subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties agree as follows:

1. Permission, Location and Access. Subject to the terms and conditions hereinafter set forth, Licensee and its agents, contractors, and subcontractors are granted a temporary license to enter upon Licensor's property, the legal description of which is as follows:

(See attached Exhibit A)

and any structures appurtenant thereto (the "Property") for purposes of conducting the Work in accordance with the schedule set forth in Table 1 of the SOW, as may be amended from time to time and for ingress and egress to perform the work. EPA and its designated representatives, the Washington State Department of Ecology and its designated representatives ("DOE"), and the

Commencement Bay Natural Resource Damage Trustees and their designated representatives, are granted a temporary license to the same extent for purposes of supervision of the Work. This temporary license in no way limits the authority of EPA and DOE under applicable federal or state laws to enter said property and to move freely about said property in accordance with such federal or state laws.

2. Entry Upon Property. Licensee and its agents, contractors, and subcontractors shall provide Licensors with at least two calendar weeks notice of the schedule of anticipated dates of access prior to the contemplated start date, and shall promptly notify Licensors of any modifications in the schedule. At least one week prior to each scheduled entry on the Property, Licensors shall provide Licensee with any relevant information regarding site conditions that could be impacted by the scheduled sampling, including, but not limited to, the presence of underground structures, utilities, and outfalls. Licensors will provide Licensee, within one calendar week of any request by Licensee, the known schedule of its shipping and berthing traffic on the Hylebos Waterway for the upcoming month. Any subsequent changes in the shipping and berthing schedule shall be provided to Licensee within 48 hours of receipt by Licensors. All notices to the Licensee shall be directed to:

Paul Fuglevand
HCC Project Manager
Dalton, Olmsted & Fuglevand
19017 120th Avenue N.E., Suite 107
Bothell, Washington 98011
Ph: (206) 486-7905
Fax: (206) 486-7651

All notices to the Licensors shall be directed to:

Name: George T. Aoki
Organization: PRI NORTHWEST, INC.
Address: 733 Bishop Street, 28th Floor
Honolulu, HI 96813
Ph: (808) 547-3282
Fax: (808) 547-3014

On-site contact for the Licensors is:

Name: Richard F. Moore
Organization: HART CROWSER, INC.
Address: 1910 Fairview Avenue East
Seattle, WA 98102-3699
Ph: (206) 324-9530
Fax: (206) 328-5581

3. Liability. The HCC shall, under the terms and conditions set forth below, indemnify and hold harmless Licensor from and against any and all losses, expenses, costs, obligations, recoveries, liens, claims, demands or causes of action for death, personal injury or property damage including reasonable attorneys' fees and costs but excluding liability relating to any environmental contamination at the Property ("Damages"), that arise out of or in connection with the willful misconduct or negligence of Licensee, its agents, contractors, and/or subcontractors in entering upon or performing the Work on the Property. The indemnity obligation of the HCC hereunder shall be subject to the following conditions and limitations:

(i) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any proportionate share of Damages caused the negligence or willful misconduct of Licensor or any other third party other than Licensee's agents, contractors and subcontractors and the HCC shall not be liable and shall have no obligation to indemnify Licensor for losses due to interruptions of business or for any other form of incidental or consequential damages;

(ii) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any Damages that are not covered under or that exceed the specified limits and available proceeds of the commercial general liability insurance policy maintained by the HCC. Such insurance policy shall provide coverage in the aggregate amount of \$2,000,000, with a \$1,000,000 per occurrence limitation. Upon request, the HCC shall furnish Licensor proof of such insurance;

(iii) Licensor shall notify the HCC in writing promptly after Licensor obtains knowledge of the occurrence of any event or the existence of any facts which may become the basis of a claim by Licensor for indemnity pursuant to this section;

(iv) HCC and its agents, contractors, and subcontractors recognize that they are waiving immunity under Industrial Insurance Law, Title 51 RCW, and that this indemnification clause has been mutually negotiated;

(v) the individual members of the HCC shall under no circumstances be liable in any manner to Licensor for matters addressed by, relating to or arising from this Agreement and the provisions of this Section 3 shall be the sole and exclusive remedy of Licensor with respect to matters addressed by, relating to or arising from this Agreement. For purposes of the enforcement of this provision, the individual members of the HCC shall be

construed to be third party beneficiaries of this Agreement.

4. Interference with Licensors Operations. All activity permitted by this temporary license shall be carried on in such a manner so as not to unduly interfere with Licensors property and operations or its use of its facilities. Licensees entry upon Licensors property shall be coordinated with Licensor in such a way as to minimize such interference. Licensor shall provide the Licensee with any relevant health and safety information applicable to the property if required by Licensor for access. Licensor ~~shall move non-fixed structures or machinery as needed for completion of the Work~~ and shall provide necessary plant training and on-site escort to Licensee and its agents, contractors, and subcontractors if required by Licensor for access. PB
/

5. Sampling and Analysis. Licensor or its authorized representative shall have the right, at Licensor's expense, to take split samples of the shoreline (Event 1B) sampling completed on the Property provided enough sampling material is available. Licensor shall give the Licensee one week notice of the desired split sampling and shall cooperate fully in the coordination of the split sampling. Licensee shall have the right, at Licensee's expense, to obtain, within a reasonable period of time, copies of the results of any split samples taken by Licensor. Upon request, Licensor shall also have the right, at Licensor's expense, to obtain, within a reasonable period of time, copies of the sampling results from the Property. It shall be the sole responsibility of the Licensee to lawfully dispose of any material Licensee has gathered as part of the sampling process. Licensor shall have the same responsibility with respect to any split samples taken by Licensor.

6. Effective Date and Term of Agreement. This Agreement shall be effective upon signature by all parties and shall terminate upon receipt by the Licensee of notice that the Work has been completed to the satisfaction of the EPA or such earlier date as EPA may authorize. Licensee shall promptly notify Licensor of such notice. At the completion of the term of this temporary license, Licensee shall restore Licensor's property to a condition as near as possible to the condition of the property before the initiation of the work contemplated herein. Any monitoring equipment installed on the Property shall be removed in compliance with applicable rules and regulations.

7. Licensors Warranty. Licensor represents and warrants that it is the owner of or otherwise has authority to grant access to the above described premises.

8. Applicable Law. The parties agree that, without respect to its conflict of laws jurisprudence, the laws of the State of Washington shall apply to this Agreement.

9. Recording. In order to ensure that subsequent purchasers have notice of this Agreement, Licensors hereby agree to record this Agreement with the Pierce County Auditor and forward a conformed copy to the Licensee as set forth in Paragraph 2 of this Agreement. Upon receipt of written notice pursuant to Paragraph 6 of this Agreement of the termination of access granted hereunder, Licensors may, at Licensors' option and expense, cause such termination notice to be similarly recorded.

10. Parties Bound. This Agreement shall be binding upon the Parties, their heirs, successors and assigns.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this agreement as of the day and year opposite each party's signature.

HYLEBOS CLEANUP COMMITTEE

Date: 28 JUL 1994

By: 

LICENSOR

Date: MAY 25, 1994

By: 

For: PRI NORTHWEST, INC.
Owner/Operator

Address: 733 Bishop Street, 28th Floor
Honolulu, HI 96813

APPENDIX A

Shoreline Sampling, Event 1B: Collect samples from the shoreline of the Hylebos Waterway (0' to + 12' MLLW) to identify sediments or other materials which may be sources of chemicals or concern to waterway sediments, and also to identify sediment which may require remediation. The sampling will generally involve walking along the shoreline and collecting surface sediment from five to ten locations along each property. The sediment from each property will be composited and submitted for chemical analysis. Currently 63 shoreline composites, covering the entire shoreline, have been identified but not yet reviewed or accepted by EPA. In addition, five properties will have core samples drilled below the mudline in locations to be determined shortly. When they have been accepted by the EPA, the locations will be forwarded to all landowners.

EXHIBIT A

Order No. 313032

D-E-S-C-R-I-P-T-I-O-N

PARCEL "A":

All of that portion of Block 11 of "STATE LAND COMMISSIONER'S REPLAT OF BLOCKS 13 to 48 both inclusive, TACOMA TIDELANDS, formerly in King County, commonly known as ASHTON'S REPLAT", according to Plat filed for recorded December 23, 1918 in the office of the County Auditor, described as follows:
Beginning at the most Northerly corner of Block 11; thence running South $42^{\circ}44'24''$ West along the Northwesternly line of said Block, 910.00 feet to the Northeastery line of Alexander Avenue as now established, being 40.00 feet North $42^{\circ}44'24''$ East from the original corner of said Block 11; thence South $47^{\circ}15'36''$ East along said Northeastery line 200.00 feet; thence North $42^{\circ}44'24''$ East 959.516 feet to the Northeastery line of said Block; thence North $69^{\circ}23'$ West 131.481 feet; thence North $47^{\circ}15'36''$ West 78.199 feet to the point of beginning, in Tacoma, Pierce County, Washington.

PARCEL "B":

Commencing at the most Northerly corner of Block 11 of "STATE LAND COMMISSIONER'S REPLAT OF BLOCKS 13 to 48 both inclusive, TACOMA TIDELANDS, formerly in King County, commonly known as ASHTON'S REPLAT", according to Plat filed for recorded December 23, 1918 in the office of the County Auditor; thence running South $42^{\circ}44'24''$ West along the Northwesternly line of said Block, 910.00 feet to the Northeastery line of Alexander Avenue as now established, being 40.00 feet North $42^{\circ}44'24''$ East from the original corner of said Block 11; thence South $47^{\circ}15'36''$ East along said Northeastery line 200.00 feet to the true point of beginning; thence North $42^{\circ}44'24''$ East 38.40 feet; thence South $47^{\circ}15'36''$ East 25.60 feet; thence South $42^{\circ}44'24''$ West 21.30 feet; thence South $47^{\circ}15'36''$ East 12.60 feet; thence South $42^{\circ}44'24''$ West 17.10 feet to the Northerly line of Alexander Avenue; thence North $47^{\circ}15'36''$ West to the true point of beginning, in Tacoma, Pierce County, Washington.

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made between the Hylebos Cleanup Committee ("HCC" or "Licensee"), and the undersigned owner and/or operator ("Licensor") (collectively the "Parties").

WHEREAS, the HCC, consisting of the Port of Tacoma, Kaiser Aluminum & Chemical Corporation, ASARCO, Inc., Occidental Chemical Corporation, Elf ATOCHEM North America, Inc., and General Metals of Tacoma, Inc., was formed in order to perform pre-remedial design for the Hylebos Waterway located within the Commencement Bay/Near Shore Tideflats Superfund Site, and has entered into an Administrative Order on Consent with the United States Environmental Protection Agency ("EPA"), Docket No. 1093-07-03-104/122 ("AOC"), which includes a Statement of Work ("SOW"), requiring that certain work be performed in connection with the study of the Hylebos Waterway; and

WHEREAS, it will be necessary for Licensee and its collective agents, contractors and subcontractors to enter upon Licensor's property to conduct certain limited environmental work and for purposes of ingress and egress for such work. The work to be performed is set forth in Appendix A of this Agreement (the "Work") and shall not be performed upland of the "higher high water line"; and

WHEREAS, in order to allow the Work to take place, Licensor is willing to grant a temporary license for such entry to Licensee and its agents, contractors, and subcontractors and their consultants, subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties agree as follows:

1. Permission, Location and Access. Subject to the terms and conditions hereinafter set forth, Licensee and its agents, contractors, and subcontractors are granted a temporary license to enter upon Licensor's property, the legal description of which is as follows:

See Attached Page

and any structures appurtenant thereto (the "Property") for purposes of conducting the Work in accordance with the schedule set forth in Table 1 of the SOW, as may be amended from time to time and for ingress and egress to perform the work. EPA and its designated representatives, the Washington State Department of Ecology and its designated representatives ("DOE"), and the Commencement Bay Natural Resource Damage Trustees and their

designated representatives, are granted a temporary license to the same extent for purposes of supervision of the Work. This temporary license in no way limits the authority of EPA and DOE under applicable federal or state laws to enter said property and to move freely about said property in accordance with such federal or state laws.

2. Entry Upon Property. Licensee and its agents, contractors, and subcontractors shall provide Licensors with at least two calendar weeks notice of the schedule of anticipated dates of access prior to the contemplated start date, and shall promptly notify Licensors of any modifications in the schedule. At least one week prior to each scheduled entry on the Property, Licensors shall provide Licensee with any relevant information regarding site conditions that could be impacted by the scheduled sampling, including, but not limited to, the presence of underground structures, utilities, and outfalls. Licensors will provide Licensee, within one calendar week of any request by Licensee, the known schedule of its shipping and berthing traffic on the Hylebos Waterway for the upcoming month. Any subsequent changes in the shipping and berthing schedule shall be provided to Licensee within 48 hours of receipt by Licensors. All notices to the Licensee shall be directed to:

Paul Fuglevand
HCC Project Manager
Dalton, Olmsted & Fuglevand
19017 120th Avenue N.E., Suite 107
Bothell, Washington 98011
Ph: (206) 486-7905
Fax: (206) 486-7651

All notices to the Licensors shall be directed to:

Name: CHRIS FISHER
Organization: STREICH BROS. INC
Address: 1650 MARINE VIEW DR.
TALOMA, WA 98422
Ph: 206-383-1491
Fax: 272-3205

On-site contact for the Licensors is:

Name: SAME AS ABOVE
Organization: _____
Address: _____
Ph: _____
Fax: _____

3. Liability. The HCC shall, under the terms and conditions set forth below, indemnify and hold harmless Licensors

from and against any and all losses, expenses, costs, obligations, recoveries, liens, claims, demands or causes of action for death, personal injury or property damage including reasonable attorneys' fees and costs but excluding liability relating to any environmental contamination at the Property ("Damages"), that arise out of or in connection with the willful misconduct or negligence of Licensee, its agents, contractors, and/or subcontractors in entering upon or performing the Work on the Property. The indemnity obligation of the HCC hereunder shall be subject to the following conditions and limitations:

(i) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any proportionate share of Damages caused by the negligence or willful misconduct of Licensor or any other third party other than Licensee's agents, contractors and subcontractors and the HCC shall not be liable and shall have no obligation to indemnify Licensor for losses due to interruptions of business or for any other form of incidental or consequential damages;

(ii) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any Damages that are not covered under or that exceed the specified limits and available proceeds of the commercial general liability insurance policy maintained by the HCC. Such insurance policy shall provide coverage in the aggregate amount of \$2,000,000, with a \$1,000,000 per occurrence limitation. Upon request, the HCC shall furnish Licensor proof of such insurance. Licensee shall maintain the insurance in full force and effect during the term of this Agreement and shall provide prior written notice to Licensor in the event of a material change in or cancellation or nonrenewal of the insurance policy. Should Licensee fail to obtain insurance upon nonrenewal or cancellation, this provision shall be subject to renegotiation by the parties in order to effectuate the intent of this Section 3(ii);

(iii) Licensor shall notify the HCC in writing promptly after Licensor obtains knowledge of the occurrence of any event or the existence of any facts which may become the basis of a claim by Licensor for indemnity pursuant to this section;

(iv) HCC and its agents, contractors, and subcontractors recognize that they are waiving immunity under Industrial Insurance Law, Title 51 RCW, and that this indemnification clause has been mutually negotiated;

(v) the individual members of the HCC shall under no circumstances be liable in any manner to Licensor for

matters addressed by, relating to or arising from this Agreement and the provisions of this Section 3 shall be the sole and exclusive remedy of Licensor with respect to matters addressed by, relating to or arising from this Agreement. For purposes of the enforcement of this provision, the individual members of the HCC shall be construed to be third party beneficiaries of this Agreement.

4. Interference with Licensor's Operations. All activity permitted by this temporary license shall be carried on in such a manner so as not to unduly interfere with Licensor's property and operations or its use of its facilities. Licensee's entry upon Licensor's property shall be coordinated with Licensor in such a way as to minimize such interference. Licensor shall provide the Licensee with any relevant health and safety information applicable to the property if required by Licensor for access. Licensor shall move non-fixed structures or machinery as needed for completion of the Work and shall provide necessary plant training and on-site escort to Licensee and its agents, contractors, and subcontractors if required by Licensor for access.

5. Sampling and Analysis. Licensor or its authorized representative shall have the right, at Licensor's expense, to take split samples of sampling completed on the Property provided enough sampling material is available. Licensor shall give the Licensee one week notice of the desired split sampling and shall cooperate fully in the coordination of the split sampling. Licensee shall have the right, at Licensee's expense, to obtain, within a reasonable period of time, copies of the results of any split samples taken by Licensor. Upon request, Licensor shall also have the right, at Licensor's expense, to obtain, within a reasonable period of time, copies of the sampling results from the Property. It shall be the sole responsibility of the Licensee to lawfully dispose of any material Licensee has gathered as part of the sampling process. Licensor shall have the same responsibility with respect to any split samples taken by Licensor.

6. Effective Date and Term of Agreement. This Agreement shall be effective upon signature by all parties and shall terminate upon receipt by the Licensee of notice that the Work has been completed to the satisfaction of the EPA or such earlier date as EPA may authorize. Licensee shall promptly notify Licensor of such notice. At the completion of the term of this temporary license, Licensee shall restore Licensor's property to a condition as near as possible to the condition of the property before the initiation of the work contemplated herein.

7. Licensor's Warranty. Licensor represents and warrants that it is the owner of or otherwise has authority to grant access to the above described premises.

8. Applicable Law. The parties agree that, without respect to its conflict of laws jurisprudence, the laws of the State of Washington shall apply to this Agreement.

9. Recording. In order to ensure that subsequent purchasers have notice of this Agreement, Licensors hereby agree to record this Agreement with the Pierce County Auditor and forward a conformed copy to the Licensee as set forth in Paragraph 2 of this Agreement. Upon receipt of written notice pursuant to Paragraph 6 of this Agreement of the termination of access granted hereunder, Licensors may, at Licensors' option and expense, cause such termination notice to be similarly recorded.

10. Parties Bound. This Agreement shall be binding upon the Parties, their heirs, successors and assigns.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this agreement as of the day and year opposite each party's signature.

HYLEBOS CLEANUP COMMITTEE

Date: 28 JUL 1994 By: [Signature]

LICENSOR

Date: 5-19-94 By: [Signature]

For: [Signature]
Owner/Operator

Address: 1650 MARINE VIEW DR
TACOMA, WA
98422

APPENDIX A

Shoreline Sampling, Event 1B: Collect samples from the shoreline of the Hylebos Waterway (0' to + 12' MLLW) to identify sediments or other materials which may be sources of chemicals or concern to waterway sediments, and also to identify sediment which may require remediation. The sampling will generally involve walking along the shoreline and collecting surface sediment from five to ten locations along each property. The sediment from each property will be composited and submitted for chemical analysis. Currently 63 shoreline composites, covering the entire shoreline, have been identified but not yet reviewed or accepted by EPA. In addition, five properties will have core samples drilled below the mudline in locations to be determined shortly. When they have been accepted by the EPA, the locations will be forwarded to all landowners.



CROWLEY MARINE SERVICES, INC.

May 19, 1994

Leonard H. Sorrin
Bogle & Gates
2 Union Square, Suite 4700
Seattle, WA 98101-2346

RECEIVED
SEP 13 1994
SUPERFUND REMEDIAL BRANCH

Dear Mr. Sorrin:

Re: Right of Entry Agreement - Hylebos Waterway, Tacoma

Enclosed you will find a fully executed copy of the above referenced Agreement as discussed in our telecon this morning. Please execute and initial page 3 and return a copy of the fully executed document for our files.

We regret that we are unable to provide a legal description of the property. We suggest that you look to Mr. Nordlund for that information.

Sincerely,

Leila Meehan
Contract/Property Manager

Enclosure

RECEIVED

MAY 05 1994

DRAFT

L. MEEHAN 5/4/94

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made between the Hylebos Cleanup Committee ("HCC" or "Licensee"), and the undersigned owner and/or operator ("Licensor") (collectively the "Parties").

WHEREAS, the HCC, consisting of the Port of Tacoma, Kaiser Aluminum & Chemical Corporation, ASARCO, Inc., Occidental Chemical Corporation, Elf ATOCHEM North America, Inc., and General Metals of Tacoma, Inc., was formed in order to perform pre-remedial design for the Hylebos Waterway located within the Commencement Bay/Near Shore Tideflats Superfund Site, and has entered into an Administrative Order on Consent with the United States Environmental Protection Agency ("EPA"), Docket No. 1093-07-03-104/122 ("AOC"), which includes a Statement of Work ("SOW"), requiring that certain work be performed in connection with the study of the Hylebos Waterway; and

WHEREAS, it will be necessary for Licensee and its collective agents, contractors and subcontractors to enter upon Licensor's property to conduct certain limited environmental work and for purposes of ingress and egress for such work. The work to be performed is set forth in Appendix A of this Agreement (the "Work") and shall not be performed upland of the "higher high water line"; and

WHEREAS, in order to allow the Work to take place, Licensor is willing to grant a temporary license for such entry to Licensee and its agents, contractors, and subcontractors and their consultants, subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties agree as follows:

1. Permission, Location and Access. Subject to the terms and conditions hereinafter set forth, Licensee and its agents, contractors, and subcontractors are granted a temporary license to enter upon Licensor's property, the legal description of which is as follows:

and any structures appurtenant thereto (the "Property") for purposes of conducting the Work in accordance with the schedule set forth in Table 1 of the SOW, as may be amended from time to time and for ingress and egress to perform the work. EPA and its designated representatives, the Washington State Department of Ecology and its designated representatives ("DOE"), and the

Commencement Bay Natural Resource Damage Trustees and their designated representatives, are granted a temporary license to the same extent for purposes of supervision of the Work. This temporary license in no way limits the authority of EPA and DOE under applicable federal or state laws to enter said property and to move freely about said property in accordance with such federal or state laws.

2. Entry Upon Property. Licensee and its agents, contractors, and subcontractors shall provide Licensors with at least two calendar weeks notice of the schedule of anticipated dates of access prior to the contemplated start date, and shall promptly notify Licensors of any modifications in the schedule. At least one week prior to each scheduled entry on the Property, Licensors shall provide Licensee with any relevant information regarding site conditions that could be impacted by the scheduled sampling, including, but not limited to, the presence of underground structures, utilities, and outfalls. Licensors will provide Licensee, within one calendar week of any request by Licensee, the known schedule of its shipping and berthing traffic on the Hylebos Waterway for the upcoming month. Any subsequent changes in the shipping and berthing schedule shall be provided to Licensee within 48 hours of receipt by Licensors. All notices to the Licensee shall be directed to:

Paul Fuglevand
HCC Project Manager
Dalton, Olmsted & Fuglevand
19017 120th Avenue N.E., Suite 107
Bothell, Washington 98011
Ph: (206) 486-7905
Fax: (206) 486-7651

All notices to the Licensors shall be directed to:

Name: L. Meehan
Organization: Crowley Marine Services, Inc.
Address: P.O. Box 2287
Seattle, WA 98111
Ph: (206) 443-8018
Fax: (206) 443-8026

On-site contact for the Licensors is:

Primary: Name: M. O'Shea or Ken Faris
Organization: Crowley Marine Services, Inc.
Address: P.O. Box 2287
Seattle, WA 98111
Ph: (206) 443-8100
Fax: (206) 443-7857

Secondary: Name: P. Nordlund
Organization: Nordlund Properties, Inc.
Address: 1621 Taylor Way - 2 -
Tacoma, WA 98421
Phone: (206) 627-0605

3. Liability. The HCC shall, under the terms and conditions set forth below, indemnify and hold harmless Licensor from and against any and all losses, expenses, costs, obligations, recoveries, liens, claims, demands or causes of action for death, personal injury or property damage including reasonable attorneys' fees and costs but excluding liability relating to any environmental contamination at the Property ("Damages"), that arise out of or in connection with the willful misconduct or negligence of Licensee, its agents, contractors, and/or subcontractors in entering upon or performing the Work on the Property. The indemnity obligation of the HCC hereunder shall be subject to the following conditions and limitations:

(i) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any proportionate share of Damages caused by the negligence or willful misconduct of Licensor or any other third party other than Licensee's agents, contractors and subcontractors and the HCC shall not be liable and shall have no obligation to indemnify Licensor for losses due to interruptions of business or for any other form of incidental or consequential damages;

(ii) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any Damages that are not covered under or that exceed the specified limits and available proceeds of the commercial general liability insurance policy maintained by the HCC. Such insurance policy shall provide coverage in the aggregate amount of \$2,000,000, with a \$1,000,000 per occurrence limitation. Upon request, the HCC shall furnish Licensor proof of such insurance;

(iii) Licensor shall notify the HCC in writing promptly after Licensor obtains knowledge of the occurrence of any event or the existence of any facts which may become the basis of a claim by Licensor for indemnity pursuant to this section;

(iv) HCC and its agents, contractors, and subcontractors recognize that they are waiving immunity under Industrial Insurance Law, Title 51 RCW, and that this indemnification clause has been mutually negotiated;

(v) the individual members of the HCC shall under no circumstances be liable in any manner to Licensor for matters addressed by, relating to or arising from this Agreement and the provisions of this Section 3 shall be the sole and exclusive remedy of Licensor with respect to matters addressed by, relating to or arising from this Agreement. For purposes of the enforcement of this provision, the individual members of the HCC shall be

construed to be third party beneficiaries of this Agreement.

4. Interference with Licensors Operations. All activity permitted by this temporary license shall be carried on in such a manner so as not to unduly interfere with Licensor's property and operations or its use of its facilities. Licensee's entry upon Licensor's property shall be coordinated with Licensor in such a way as to minimize such interference. Licensor shall provide the Licensee with any relevant health and safety information applicable to the property if required by Licensor for access. Licensor shall move non-fixed structures or machinery as needed for completion of the Work and shall provide necessary plant training and on-site escort to Licensee and its agents, contractors, and subcontractors if required by Licensor for access.

5. Sampling and Analysis. Licensor or its authorized representative shall have the right, at Licensor's expense, to take split samples of the shoreline (Event 1B) sampling completed on the Property provided enough sampling material is available. Licensor shall give the Licensee one week notice of the desired split sampling and shall cooperate fully in the coordination of the split sampling. Licensee shall have the right, at Licensee's expense, to obtain, within a reasonable period of time, copies of the results of any split samples taken by Licensor. Upon request, Licensor shall also have the right, at Licensor's expense, to obtain, within a reasonable period of time, copies of the sampling results from the Property. It shall be the sole responsibility of the Licensee to lawfully dispose of any material Licensee has gathered as part of the sampling process. Licensor shall have the same responsibility with respect to any split samples taken by Licensor.

6. Effective Date and Term of Agreement. This Agreement shall be effective upon signature by all parties and shall terminate upon receipt by the Licensee of notice that the Work has been completed to the satisfaction of the EPA or such earlier date as EPA may authorize. Licensee shall promptly notify Licensor of such notice. At the completion of the term of this temporary license, Licensee shall restore Licensor's property to a condition as near as possible to the condition of the property before the initiation of the work contemplated herein. Any monitoring equipment installed on the Property shall be removed in compliance with applicable rules and regulations.

7. Licensor's Warranty. Licensor represents and warrants that it is the owner of or otherwise has authority to grant access to the above described premises.

8. Applicable Law. The parties agree that, without respect to its conflict of laws jurisprudence, the laws of the State of Washington shall apply to this Agreement.

9. Recording. In order to ensure that subsequent purchasers have notice of this Agreement, Licensors hereby agree to record this Agreement with the Pierce County Auditor and forward a conformed copy to the Licensee as set forth in Paragraph 2 of this Agreement. Upon receipt of written notice pursuant to Paragraph 6 of this Agreement of the termination of access granted hereunder, Licensors may, at Licensors' option and expense, cause such termination notice to be similarly recorded.

10. Parties Bound. This Agreement shall be binding upon the Parties, their heirs, successors and assigns.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this agreement as of the day and year opposite each party's signature.

HYLEBOS CLEANUP COMMITTEE

Date: 28 JUL 1994

By: 

LICENSOR

Date: 5/19/94

By: Leila Meehan

For: Crowley Marine Services, Inc.
Owner/Operator TENANT

Address: P.O. Box 2287
Seattle, WA 98111

APPENDIX A

Shoreline Sampling, Event 1B: Collect samples from the shoreline of the Hylebos Waterway (0' to + 12' MLLW) to identify sediments or other materials which may be sources of chemicals or concern to waterway sediments, and also to identify sediment which may require remediation. The sampling will generally involve walking along the shoreline and collecting surface sediment from five to ten locations along each property. The sediment from each property will be composited and submitted for chemical analysis. Currently 63 shoreline composites, covering the entire shoreline, have been identified but not yet reviewed or accepted by EPA. In addition, five properties will have core samples drilled below the mudline in locations to be determined shortly. When they have been accepted by the EPA, the locations will be forwarded to all landowners.

RECEIVED DRAFT
SEP 13 1994 5/4/94
SUPERFUND REMEDIAL BRANCH

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made between the Hylebos Cleanup Committee ("HCC" or "Licensee"), and the undersigned owner and/or operator ("Licensor") (collectively the "Parties").

WHEREAS, the HCC, consisting of the Port of Tacoma, Kaiser Aluminum & Chemical Corporation, ASARCO, Inc., Occidental Chemical Corporation, Elf ATOCHEM North America, Inc., and General Metals of Tacoma, Inc., was formed in order to perform pre-remedial design for the Hylebos Waterway located within the Commencement Bay/Near Shore Tideflats Superfund Site, and has entered into an Administrative Order on Consent with the United States Environmental Protection Agency ("EPA"), Docket No. 1093-07-03-104/122 ("AOC"), which includes a Statement of Work ("SOW"), requiring that certain work be performed in connection with the study of the Hylebos Waterway; and

WHEREAS, it will be necessary for Licensee and its collective agents, contractors and subcontractors to enter upon Licensor's property to conduct certain limited environmental work and for purposes of ingress and egress for such work. The work to be performed is set forth in Appendix A of this Agreement (the "Work") and shall not be performed upland of the "higher high water line"; and

WHEREAS, in order to allow the Work to take place, Licensor is willing to grant a temporary license for such entry to Licensee and its agents, contractors, and subcontractors and their consultants, subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties agree as follows:

1. Permission, Location and Access. Subject to the terms and conditions hereinafter set forth, Licensee and its agents, contractors, and subcontractors are granted a temporary license to enter upon Licensor's property, the legal description of which is as follows:

Legal Description is attached. Murray Pacific's property is
at 3502 Lincoln Ave. E.

and any structures appurtenant thereto (the "Property") for purposes of conducting the Work in accordance with the schedule set forth in Table 1 of the SOW, as may be amended from time to time and for ingress and egress to perform the work. EPA and its designated representatives, the Washington State Department of Ecology and its designated representatives ("DOE"), and the

Commencement Bay Natural Resource Damage Trustees and their designated representatives, are granted a temporary license to the same extent for purposes of supervision of the Work. This temporary license in no way limits the authority of EPA and DOE under applicable federal or state laws to enter said property and to move freely about said property in accordance with such federal or state laws.

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Paul Fuglevand
HCC Project Manager
Dalton, Olmsted & Fuglevand
19017 120th Avenue N.E., Suite 107
Bothell, Washington 98011
Ph: (206) 486-7905
Fax: (206) 486-7651

All notices to the Licensor shall be directed to:

Name: Chuck Shenk
Organization: Murray Pacific Corp.
Address: 3502 Lincoln Ave. E
Tacoma, WA 98421
Ph: 206/383-5871
Fax: 206/627-4330

On-site contact for the Licensor is:

Name: Chuck Shenk
Organization: Murray Pacific Corp.
Address: 3502 Lincoln Ave. E
Tacoma, WA 98421
Ph: 206/383-5871
Fax: 206/627-4330

3. Liability. The HCC shall, under the terms and conditions set forth below, indemnify and hold harmless Licensor from and against any and all losses, expenses, costs, obligations, recoveries, liens, claims, demands or causes of action for death, personal injury or property damage including reasonable attorneys' fees and costs but excluding liability relating to any environmental contamination at the Property ("Damages"), that arise out of or in connection with the willful misconduct or negligence of Licensee, its agents, contractors, and/or subcontractors in entering upon or performing the Work on the Property. The indemnity obligation of the HCC hereunder shall be subject to the following conditions and limitations:

(i) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any proportionate share of Damages caused the negligence or willful misconduct of Licensor or any other third party other than Licensee's agents, contractors and subcontractors and the HCC shall not be liable and shall have no obligation to indemnify Licensor for losses due to interruptions of business or for any other form of incidental or consequential damages;

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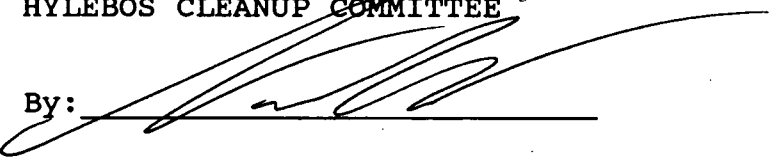
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IN WITNESS WHEREOF, the authorized representatives of the parties have executed this agreement as of the day and year opposite each party's signature.


HYLEBOS CLEANUP COMMITTEE

Date: 28 July 1994

By: 

LICENSOR

Date: 5/9/94

By: L.T. Murray 

For: MURRAY PACIFIC CORP
Owner/Operator

Address: 3502 LINCOLN AVE E
TACOMA, WA 98421

APPENDIX A

Shoreline Sampling, Event 1B: Collect samples from the shoreline of the Hylebos Waterway (0' to + 12' MLLW) to identify sediments or other materials which may be sources of chemicals or concern to waterway sediments, and also to identify sediment which may require remediation. The sampling will generally involve walking along the shoreline and collecting surface sediment from five to ten locations along each property. The sediment from each property will be composited and submitted for chemical analysis. Currently 63 shoreline composites, covering the entire shoreline, have been identified but not yet reviewed or accepted by EPA. In addition, five properties will have core samples drilled below the mudline in locations to be determined shortly. When they have been accepted by the EPA, the locations will be forwarded to all landowners.

ATTACHMENT - LEGAL DESCRIPTION

The Murray Pacific Log Sort Yard #1 is comprised of three separate parcels of land acquired at different times. For the purposes of this document, these are identified as Parcels 1, 2, and 3. The legal descriptions for these parcels have been provided by Murray Pacific Corporation.

PARCEL 1

WEST FORK TIMBER COMPANY OWNS A PARCEL OF PROPERTY THAT ABUTS THE SOUTHEASTERLY LINE OF LINCOLN AVENUE FROM THE INTERSECTION WITH TAYLOR WAY TO A POINT ON THE SOUTHEASTERLY LINE OF LINCOLN AVENUE 592.62 FEET NORTHEAST OF THE INTERSECTION WITH TAYLOR WAY, SAID POINT BEING 344.53 SOUTHWEST OF THE HYLEBOS CREEK WATERWAY. THE LEGAL DESCRIPTION OF THAT PROPERTY IS AS FOLLOWS:

WEST FORK PARCEL: BEGINNING AT THE INTERSECTION OF THE NORTHEASTERLY LINE OF TAYLOR WAY AND THE SOUTHEASTERLY LINE OF LINCOLN AVENUE AS NOW LOCATED IN THE NORTHEAST QUARTER OF SECTION 35, TOWNSHIP 21 NORTH, RANGE 3 EAST OF THE W.M., THENCE SOUTHEASTERLY ALONG THE NORTHEASTERLY LINE OF TAYLOR WAY TO INTERSECT THE MOST WESTERLY CORNER OF THAT PARCEL OF LAND DESCRIBED IN DEED RECORDED IN BOOK 727 OF DEEDS AT PAGE 665 UNDER AUDITOR'S FEE NO. 1328787, RECORDS OF SAID COUNTY; THENCE NORTH 55 DEGREES 41 MINUTES 44 SECONDS EAST ALONG THE NORTHERLY LINE OF PARCEL REFERRED TO HEREIN, 710.53 FEET TO THE MOST NORTHERLY CORNER OF SAID PARCEL; THENCE SOUTH 48 DEGREES 14 MINUTES 46 SECONDS EAST 428.2 FEET TO THE MOST EASTERLY CORNER OF SAID PARCEL; THENCE NORTH 60 DEGREES 34 MINUTES 14 SECONDS EAST 248.27 FEET, MORE OR LESS, ALONG THE NORTHWESTERLY LINE OF THAT CERTAIN TRACT OF LAND DESCRIBED IN DEED RECORDED IN BOOK 547 OF DEEDS AT PAGE 364 UNDER AUDITOR'S FEE NO. 1160643, RECORDS OF SAID COUNTY, TO INTERSECT THE SOUTHWESTERLY LINE OF THE HYLEBOS CREEK WATERWAY; THENCE NORTH 48 DEGREES 14 MINUTES 46 SECONDS WEST ALONG SAID SOUTHWESTERLY LINE TO INTERSECT THE NORTH LINE OF SECTION 35; THENCE WEST ALONG THE NORTH LINE OF SAID SECTION TO THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 35; THENCE NORTHERLY ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 21 NORTH, RANGE 3 EAST OF THE W.M., 126.79 FEET, MORE OR LESS, TO INTERSECT THE SOUTHEASTERLY LINE OF LINCOLN AVENUE AS NOW LOCATED; THENCE SOUTHWESTERLY ALONG THE SOUTHEASTERLY LINE OF LINCOLN AVENUE 592.62 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

PARCEL 2

ALL OF THAT PART OF GOVERNMENT LOT 10, SECTION 26, TOWNSHIP 21 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, IN PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 10; THENCE ON WEST LINE OF SAID LOT 10 NORTH 01 DEGREES 27 MINUTES 35 SECONDS EAST 126.79 FEET TO SOUTHERLY LINE OF LINCOLN AVENUE; THENCE ON THE SOUTHERLY LINE OF LINCOLN AVENUE NORTH 42 DEGREES 46 MINUTES 54 SECONDS EAST 344.53 FEET TO THE SOUTHWESTERLY LINE OF HYLEBOS WATERWAY; THENCE ALONG SAID LINE OF WATERWAY SOUTH 48 DEGREES 14 MINUTES 46 SECONDS EAST 410 FEET, MORE OR LESS, TO LEFT BANK OF HYLEBOS CREEK; THENCE SOUTHEASTERLY ALONG BANK TO SOUTH LINE OF SAID LOT 10; THENCE NORTH 89 DEGREES 50 MINUTES 10 SECONDS WEST ALONG SAID SOUTH LINE 640 FEET, MORE OR LESS, TO THE PLACE OF BEGINNING.

ALSO A STRIP, BELT OR PIECE OF LAND LYING BETWEEN THE LEFT BANK OF HYLEBOS CREEK AND THE SOUTHERLY RIGHT OF WAY LINE OF COMMERCIAL WATERWAY DISTRICT NO. 1, PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY LINE OF SAID WATERWAY AND THE SOUTH LINE OF GOVERNMENT LOT 10, SECTION 26, TOWNSHIP 21 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN; THENCE ALONG SAID RIGHT OF WAY LINE NORTH 48 DEGREES 14 MINUTES 46 SECONDS WEST FOR A DISTANCE OF 155 FEET, MORE OR LESS, TO THE LEFT BANK OF HYLEBOS CREEK; THENCE SOUTHEASTERLY ALONG SAID BANK FOR A DISTANCE OF 160 FEET, MORE OR LESS, TO THE PLACE OF BEGINNING.

PARCEL 3

BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 35, TOWNSHIP 21 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, IN PIERCE COUNTY, WASHINGTON; THENCE ON THE SOUTH LINE OF SAID SUBDIVISION SOUTH 88 DEGREES 51 MINUTES 50 SECONDS EAST 654.86 FEET TO THE SOUTHEAST CORNER OF SAID SUBDIVISION; THENCE NORTH 60 DEGREES 34 MINUTES 14 SECONDS EAST 262.11 FEET TO A LINE PARALLEL WITH AND 235 FEET SOUTHWESTERLY OF THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF HYLEBOS CREEK WATERWAY; THENCE ON SAID PARALLEL LINE NORTH 48 DEGREES 14 MINUTES 46 SECONDS WEST 428.2 FEET; THENCE SOUTH 55 DEGREES 41 MINUTES 44 SECONDS WEST 710.53 FEET TO THE NORTHEASTERLY LINE OF TAYLOR WAY EXTENSION WHERE INTERSECTED BY AN EXTENSION WESTERLY OF SAID SOUTH

LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE
NORTHEAST QUARTER OF SAID SECTION 35; THENCE SOUTH 88 DEGREES 51
MINUTES 50 SECONDS EAST 23.38 FEET TO THE POINT OF BEGINNING.

RIGHT OF ENTRY AGREEMENT

RECEIVED
SEP 13 1994
SUPERFUND HIGHLIGHTS

THIS AGREEMENT, is made between the Hylebos Cleanup Committee ("HCC"), its individual members, the Port of Tacoma, Kaiser Aluminum & Chemical Corporation, ASARCO, Inc., Occidental Chemical Corporation, Elf ATOCHEM North America, Inc., and General Metals of Tacoma, Inc., ("Licensee") and the undersigned owner and/or operator ("Licensor").

WHEREAS, the HCC was formed in order to perform pre-remedial design for the Hylebos Waterway located within the Commencement Bay/Near Shore Tide Flats Superfund Site, and has entered into an Administrative Order on Consent with the United States Environmental Protection Agency ("EPA"), Docket No. 1093-07-03-104/122 ("AOC"), which includes a Statement of Work ("SOW"), requiring that certain work be performed in connection with the study of the Hylebos Waterway; and

WHEREAS, it will be necessary for Licensee and its collective agents, contractors and subcontractors to enter upon Licensor's property to conduct certain limited environmental tests as set forth in Appendix A of this Agreement (the "Work"); and

WHEREAS, in order to allow the Work to take place, Licensor is willing to grant a temporary license for such entry to Licensee and its agents, contractors, and subcontractors and their consultants, subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties agree as follows:

1. Permission, Location and Access. Subject to the terms and conditions hereinafter set forth, Licensee and its agents, contractors, and subcontractors are granted a temporary license to enter upon, and freely move about, Licensor's property, a legal description of which is provided in Exhibit B, attached hereto and incorporated herein and any structures appurtenant thereto ("the Property") for purposes of conducting the Work in accordance with the schedule set forth in Table 1 of the SOW, as may be amended from time to time. EPA and its designated representatives, the Washington State Department of Ecology and its designated representatives ("DOE"), and the Commencement Bay Natural Resource Damage Trustees and their designated representatives, are granted a temporary license to the same extent for purposes of supervision of the Work.

2. Entry Upon Property. Licensee and its agents, contractors, and subcontractors shall provide Licensor with reasonable notice of the schedule of anticipated dates of access prior to the contemplated start date, and shall promptly notify Licensor of any modifications in the schedule. Licensor will provide Licensee, within one calendar week of any such request, the

known schedule of its shipping and berthing traffic on the Hylebos Waterway for the upcoming month. Any subsequent changes in the shipping and berthing schedule shall be provided to Licensee within 48 hours of receipt by Licensor.

3. Liability. The HCC shall indemnify and hold harmless Licensor from and against any and all losses, expenses, costs, obligations, recoveries, liens, claims, demands or causes of action for death, personal injury or property damage including reasonable attorneys' fees and costs but excluding liability relating to the existence of any environmental contamination at the Property ("Damages"), that arise out of or in connection with the willful misconduct or negligence of Licensee and its agents, contractors, and subcontractors in entering upon or performing work on the Property. The indemnity obligation of the HCC hereunder shall be subject to the following conditions and limitations:

(i) the HCC shall not be liable and shall have no obligation to indemnify Licensor hereunder to the extent Damages are caused by Licensor or any other third party other than Licensee and the HCC shall not be liable and shall have no obligation to indemnify Licensor hereunder for losses due to interruptions of business or for any other form of incidental or consequential damages;

(ii) the HCC shall not be liable and shall have no obligation to indemnify Licensor hereunder for any Damages that are not covered under or that exceed the specified limits and available proceeds of any insurance policies maintained by the HCC. Said insurance policy shall provide such coverage in the aggregate amount of \$1,000,000.00; and

(iii) Licensor shall notify the HCC in writing promptly after Licensor obtains knowledge of the occurrence of any event or the existence of any facts which may become the basis of a claim by Licensor for indemnity pursuant to this section and shall take reasonable steps to mitigate any damages.

4. Interference with Licensor's Operations. All activity permitted by this temporary license shall be carried on in such a manner so as not to unduly interfere with Licensor's property and operations or its use of its facilities. Licensee's entry upon Licensor's property shall be coordinated with Licensor in such a way as to minimize such interference. Licensor agrees to move non-fixed structures or machinery as needed for completion of the Work and further agrees to provide necessary plant training and on-site escort to Licensee and its agents, contractors, and subcontractors.

5. Effective Date and Term of Agreement. This Agreement shall be effective upon signature by all parties. Access granted hereunder to Licensee shall expire thirty days after the Work has been completed to the satisfaction of the EPA or such earlier date as EPA may authorize. At the completion of the term of this temporary license, Licensee shall restore Licensor's property to a condition as near as possible to the condition of the property before the initiation of the work contemplated herein. Any monitoring equipment installed on the Property shall be removed in compliance with applicable rules and regulations.

6. Licensor's Warranty. Licensor represents and warrants that it is the owner of or otherwise has authority, without limitation, to grant access to the above described premises.

7. Applicable Law. The parties agree that, without respect to its conflict of laws jurisprudence, the laws of the State of Washington shall apply to this Agreement.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this agreement as of the day and year opposite each parties signature.

HYLEBOS CLEANUP COMMITTEE

Date: 28 July 1994

By: [Signature]

LICENSOR

Date: Feb. 11, 94

By: [Signature]

Boardman W. Brown
700 S. Lake Avenue #221
Pasadena, CA 91106



Mr LEONARD SCORIN
BOGLE & GATES.
TWO UNION SQUARE
SEATTLE, WA.

- 98101 -

HYLEBOS WATERWAY.

RECEIVED
SEP 13 1994
DRAFT
5/4/94
SUPERFUND REMEDIAL BRANCH

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made between the Hylebos Cleanup Committee ("HCC" or "Licensee"), and the undersigned owner and/or operator ("Licensor") (collectively the "Parties").

WHEREAS, the HCC, consisting of the Port of Tacoma, Kaiser Aluminum & Chemical Corporation, ASARCO, Inc., Occidental Chemical Corporation, Elf ATOCHEM North America, Inc., and General Metals of Tacoma, Inc., was formed in order to perform pre-remedial design for the Hylebos Waterway located within the Commencement Bay/Near Shore Tideflats Superfund Site, and has entered into an Administrative Order on Consent with the United States Environmental Protection Agency ("EPA"), Docket No. 1093-07-03-104/122 ("AOC"), which includes a Statement of Work ("SOW"), requiring that certain work be performed in connection with the study of the Hylebos Waterway; and

WHEREAS, it will be necessary for Licensee and its collective agents, contractors and subcontractors to enter upon Licensor's property to conduct certain limited environmental work and for purposes of ingress and egress for such work. The work to be performed is set forth in Appendix A of this Agreement (the "Work") and shall not be performed upland of the "higher high water line"; and

WHEREAS, in order to allow the Work to take place, Licensor is willing to grant a temporary license for such entry to Licensee and its agents, contractors, and subcontractors and their consultants, subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties agree as follows:

1. Permission, Location and Access. Subject to the terms and conditions hereinafter set forth, Licensee and its agents, contractors, and subcontractors are granted a temporary license to enter upon Licensor's property, the legal description of which is as follows:

Please see Attached.

and any structures appurtenant thereto (the "Property") for purposes of conducting the Work in accordance with the schedule set forth in Table 1 of the SOW, as may be amended from time to time and for ingress and egress to perform the work. EPA and its designated representatives, the Washington State Department of Ecology and its designated representatives ("DOE"), and the

Commencement Bay Natural Resource Damage Trustees and their designated representatives, are granted a temporary license to the same extent for purposes of supervision of the Work. This temporary license in no way limits the authority of EPA and DOE under applicable federal or state laws to enter said property and to move freely about said property in accordance with such federal or state laws.

2. Entry Upon Property. Licensee and its agents, contractors, and subcontractors shall provide Licensor with at least two calendar weeks notice of the schedule of anticipated dates of access prior to the contemplated start date, and shall promptly notify Licensor of any modifications in the schedule. At least one week prior to each scheduled entry on the Property, Licensor shall provide Licensee with any relevant information regarding site conditions that could be impacted by the scheduled sampling, including, but not limited to, the presence of underground structures, utilities, and outfalls. Licensor will provide Licensee, within one calendar week of any request by Licensee, the known schedule of its shipping and berthing traffic on the Hylebos Waterway for the upcoming month. Any subsequent changes in the shipping and berthing schedule shall be provided to Licensee within 48 hours of receipt by Licensor. All notices to the Licensee shall be directed to:

Paul Fuglevand
HCC Project Manager
Dalton, Olmsted & Fuglevand
19017 120th Avenue N.E., Suite 107
Bothell, Washington 98011
Ph: (206) 486-7905
Fax: (206) 486-7651

All notices to the Licensor shall be directed to:

Name: RON Oline
Organization: Hylebos Marina, Inc
Address: 1940 Marine View Dr.
Tacoma, WA 98422
Ph: 272-6623
Fax: _____

On-site contact for the Licensor is:

Name: SAME AS ABOVE.
Organization: _____
Address: _____
Ph: _____
Fax: _____

3. Liability. The HCC shall, under the terms and conditions set forth below, indemnify and hold harmless Licensor from and against any and all losses, expenses, costs, obligations, recoveries, liens, claims, demands or causes of action for death, personal injury or property damage including reasonable attorneys' fees and costs but excluding liability relating to any environmental contamination at the Property ("Damages"), that arise out of or in connection with the willful misconduct or negligence of Licensee, its agents, contractors, and/or subcontractors in entering upon or performing the Work on the Property. The indemnity obligation of the HCC hereunder shall be subject to the following conditions and limitations:

(i) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any proportionate share of Damages caused the negligence or willful misconduct of Licensor or any other third party other than Licensee's agents, contractors and subcontractors and the HCC shall not be liable and shall have no obligation to indemnify Licensor for losses due to interruptions of business or for any other form of incidental or consequential damages;

(ii) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any Damages that are not covered under or that exceed the specified limits and available proceeds of the commercial general liability insurance policy maintained by the HCC. Such insurance policy shall provide coverage in the aggregate amount of \$2,000,000, with a \$1,000,000 per occurrence limitation. Upon request, the HCC shall furnish Licensor proof of such insurance;

(iii) Licensor shall notify the HCC in writing promptly after Licensor obtains knowledge of the occurrence of any event or the existence of any facts which may become the basis of a claim by Licensor for indemnity pursuant to this section;

(iv) HCC and its agents, contractors, and subcontractors recognize that they are waiving immunity under Industrial Insurance Law, Title 51 RCW, and that this indemnification clause has been mutually negotiated;

(v) the individual members of the HCC shall under no circumstances be liable in any manner to Licensor for matters addressed by, relating to or arising from this Agreement and the provisions of this Section 3 shall be the sole and exclusive remedy of Licensor with respect to matters addressed by, relating to or arising from this Agreement. For purposes of the enforcement of this provision, the individual members of the HCC shall be

construed to be third party beneficiaries of this Agreement.

4. Interference with Licensor's Operations. All activity permitted by this temporary license shall be carried on in such a manner so as not to unduly interfere with Licensor's property and operations or its use of its facilities. Licensee's entry upon Licensor's property shall be coordinated with Licensor in such a way as to minimize such interference. Licensor shall provide the Licensee with any relevant health and safety information applicable to the property if required by Licensor for access. Licensor shall move non-fixed structures or machinery as needed for completion of the Work and shall provide necessary plant training and on-site escort to Licensee and its agents, contractors, and subcontractors if required by Licensor for access.

5. Sampling and Analysis. Licensor or its authorized representative shall have the right, at Licensor's expense, to take split samples of the shoreline (Event 1B) sampling completed on the Property provided enough sampling material is available. Licensor shall give the Licensee one week notice of the desired split sampling and shall cooperate fully in the coordination of the split sampling. Licensee shall have the right, at Licensee's expense, to obtain, within a reasonable period of time, copies of the results of any split samples taken by Licensor. Upon request, Licensor shall also have the right, at Licensor's expense, to obtain, within a reasonable period of time, copies of the sampling results from the Property. It shall be the sole responsibility of the Licensee to lawfully dispose of any material Licensee has gathered as part of the sampling process. Licensor shall have the same responsibility with respect to any split samples taken by Licensor.

6. Effective Date and Term of Agreement. This Agreement shall be effective upon signature by all parties and shall terminate upon receipt by the Licensee of notice that the Work has been completed to the satisfaction of the EPA or such earlier date as EPA may authorize. Licensee shall promptly notify Licensor of such notice. At the completion of the term of this temporary license, Licensee shall restore Licensor's property to a condition as near as possible to the condition of the property before the initiation of the work contemplated herein. Any monitoring equipment installed on the Property shall be removed in compliance with applicable rules and regulations.

7. Licensor's Warranty. Licensor represents and warrants that it is the owner of or otherwise has authority to grant access to the above described premises.

8. Applicable Law. The parties agree that, without respect to its conflict of laws jurisprudence, the laws of the State of Washington shall apply to this Agreement.

9. Recording. In order to ensure that subsequent purchasers have notice of this Agreement, Licensors hereby agree to record this Agreement with the Pierce County Auditor and forward a conformed copy to the Licensee as set forth in Paragraph 2 of this Agreement. Upon receipt of written notice pursuant to Paragraph 6 of this Agreement of the termination of access granted hereunder, Licensors may, at Licensors' option and expense, cause such termination notice to be similarly recorded.

10. Parties Bound. This Agreement shall be binding upon the Parties, their heirs, successors and assigns.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this agreement as of the day and year opposite each party's signature.

HYLEBOS CLEANUP COMMITTEE

Date: 28 JULY 1994

By: 

LICENSOR

Date: 6-1-94

By: 

Hylebos Marina Inc.

/ President

For: RON OLIVE / Judy Johnson
Owner/Operator

Address: 1940 Marine View Dr.
Tacoma, WA 98422

APPENDIX A

Shoreline Sampling, Event 1B: Collect samples from the shoreline of the Hylebos Waterway (0' to + 12' MLLW) to identify sediments or other materials which may be sources of chemicals or concern to waterway sediments, and also to identify sediment which may require remediation. The sampling will generally involve walking along the shoreline and collecting surface sediment from five to ten locations along each property. The sediment from each property will be composited and submitted for chemical analysis. Currently 63 shoreline composites, covering the entire shoreline, have been identified but not yet reviewed or accepted by EPA. In addition, five properties will have core samples drilled below the mudline in locations to be determined shortly. When they have been accepted by the EPA, the locations will be forwarded to all landowners.

H.C.C. Access Agreement

Attachment to Paragraph 1.

Legal Descriptions

PARCEL # 03-21-26-4-057

That portion of Government Lot 2, Section 36, Township 21 North, Range 3 East, W.M.; that portion of the southwest quarter of the southwest quarter of the southwest quarter of Section 25, Township 21 North, Range 3 East, W.M.; and that portion of Government Lot 11, Section 26, Township 21 North, Range 3 East, W.M., lying northeasterly of Marine View Drive, and southwesterly of Julia Gulch County Road.

EXCEPT that portion conveyed to the Port of Tacoma by deed recorded under Auditor's Fee No. 1941912, described as follows:

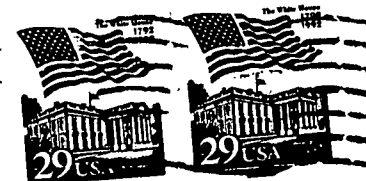
Commencing at the northeast corner of the south half of the northeast quarter of the northwest quarter of Section 36, Township 21 North, Range 3 East of the W.M.; thence north $88^{\circ}14'00''$ west along the north line of said subdivision a distance of 834.13 feet to the true point of beginning of this description; thence continuing along said north line projected into the northwest quarter of the northwest quarter of said Section 36 a distance of 484.07 feet to intersect the northeasterly right of way line of Marine View Drive; thence north $18^{\circ}09'57''$ east along the northeasterly right of way line of Marine View Drive a distance of 500.00 feet; thence south $67^{\circ}51'47''$ east 924.50 feet to the true point of beginning; and

EXCEPT that portion thereof condemned by the City of Tacoma in Pierce County Superior Court Cause No. 65162.

PARCEL # 03-21-25-3-039

Commencing at the southeast corner of Government Lot 11 in the southeast quarter of Section 26, Township 21 North, Range 3 East of the W.M.; thence north $00^{\circ}38'53''$ east along the east line of said Section for a distance of 400 feet; thence south $45^{\circ}22'22''$ west to the southwesterly line of Marine View Drive as condemned under Pierce County Superior Court Cause No. 67546, and the true point of beginning; thence north $48^{\circ}18'36''$ west along the southwesterly line of Marine View Drive 295 feet, more or less, to the most easterly corner of tract of land contracted to be conveyed to Donald E. Oline and Alba M. Oline, his wife, by instrument recorded September 7, 1971 under Auditor's Fee No. 2409340; thence south $42^{\circ}48'45''$ west a distance of 430.08 feet to the northeasterly boundary line of Hylebos Waterway; thence south $48^{\circ}18'36''$ east along the northerly line of Hylebos Waterway a distance of 1307.14 feet to the south line of Government Lot 2 in Section 36, Township 21 North, Range 3 East, W.M.; thence east along the south line of Government Lot 2 a distance of 620 feet, more or less, to the southwesterly line of Marine View Drive; thence northerly along the southwesterly line of Marine View Drive to the point of beginning.

HYLEBOS MARINA
1940 MARINE VIEW DRIVE
TACOMA, WASHINGTON 98422



Paul Fuglevand
Dalton, Olmsted & Fuglevand.
19017 120th Ave N.E suite 107
Bothell, WA 98011



DEPARTMENT OF THE NAVY

OFFICE OF THE GENERAL COUNSEL

OFFICE OF COUNSEL
ENGINEERING FIELD ACTIVITY, NORTHWEST
NAVAL FACILITIES ENGINEERING COMMAND
3505 NORTHWEST ANDERSON HILL ROAD
SILVERDALE, WASHINGTON 98383-9130

June 10, 1994

Leonard H. Sorrin
Bogle & Gates
Two Union Square
601 Union Street
Seattle, WA 98101-2346

Dear Mr. Sorrin:

Enclosed are duplicate original Hylebos Waterway access agreements which have been executed by the Navy and now await execution by the HCC. Please return one original to me after the HCC has signed it.

Some changes have been made to the license agreement to satisfy several concerns of the Navy. Pursuant to the stated purpose of section 9, we are willing to provide subsequent purchasers with notice of this agreement. Because recording this agreement would create an unnecessary and inappropriate encumbrance to the property in question, however, we are not willing to record the agreement. Section 9 has been revised accordingly. Section 11 was added to clarify that the license granted by this agreement is revocable at any time by the licensor. Additionally, other minor signature additions to the signature page were added to accommodate our internal review and approval procedure.

If you have any questions, please call me at (206) 396-6974;
FAX (206) 396-6999.

Sincerely,

ERIC W. HANGER
Assistant Counsel

Copy to:
CO, NAVMARCORESCEN, Tacoma

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made between the Hylebos Cleanup Committee ("HCC" or "Licensee"), and the undersigned owner and/or operator ("Licensor") (collectively the "Parties").

WHEREAS, the HCC, consisting of the Port of Tacoma, Kaiser Aluminum & Chemical Corporation, ASARCO, Inc., Occidental Chemical Corporation, Elf ATOCHEM North America, Inc., and General Metals of Tacoma, Inc., was formed in order to perform pre-remedial design for the Hylebos Waterway located within the Commencement Bay/Near Shore Tidelands Superfund Site, and has entered into an Administrative Order on Consent with the United States Environmental Protection Agency ("EPA"), Docket No. 1093-07-03-104/122 ("AOC"), which includes a Statement of Work ("SOW"), requiring that certain work be performed in connection with the study of the Hylebos Waterway; and

WHEREAS, it will be necessary for Licensee and its collective agents, contractors and subcontractors to enter upon Licensor's property to conduct certain limited environmental work and for purposes of ingress and egress for such work. The work to be performed is set forth in Appendix A of this Agreement (the "Work") and shall not be performed upland of the "higher high water line"; and

WHEREAS, in order to allow the Work to take place, Licensor is willing to grant a temporary license for such entry to Licensee and its agents, contractors, and subcontractors and their consultants, subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties agree as follows:

1. Permission, Location and Access. Subject to the terms and conditions hereinafter set forth, Licensee and its agents, contractors, and subcontractors are granted a temporary license to enter upon Licensor's property, the legal description of which is as follows:

See attached real estate summary and topographic maps

and any structures appurtenant thereto (the "Property") for purposes of conducting the Work in accordance with the schedule set forth in Table 1 of the SOW, as may be amended from time to time and for ingress and egress to perform the work. EPA and its designated representatives, the Washington State Department of Ecology and its designated representatives ("DOE"), and the Commencement Bay Natural Resource Damage Trustees and their

designated representatives, are granted a temporary license to the same extent for purposes of supervision of the Work. This temporary license in no way limits the authority of EPA and DOE under applicable federal or state laws to enter said property and to move freely about said property in accordance with such federal or state laws.

2. Entry Upon Property. Licensee and its agents, contractors, and subcontractors shall provide Licensor with at least two calendar weeks notice of the schedule of anticipated dates of access prior to the contemplated start date, and shall promptly notify Licensor of any modifications in the schedule. At least one week prior to each scheduled entry on the Property, Licensor shall provide Licensee with any relevant information regarding site conditions that could be impacted by the scheduled sampling, including, but not limited to, the presence of underground structures, utilities, and outfalls. Licensor will provide Licensee, within one calendar week of any request by Licensee, the known schedule of its shipping and berthing traffic on the Hylebos Waterway for the upcoming month. Any subsequent changes in the shipping and berthing schedule shall be provided to Licensee within 48 hours of receipt by Licensor. All notices to the Licensee shall be directed to:

Paul Fuglevand
HCC Project Manager
Dalton, Olmsted & Fuglevand
19017 120th Avenue N.E., Suite 107
Bothell, Washington 98011
Ph: (206) 486-7905
Fax: (206) 486-7651

All notices to the Licensor shall be directed to:

Name: Douglas Thelin
Organization: Dept. of Navy, Engineering Field Activity NW
Address: 3505 NW Anderson Hill Road
Silverdale, WA 98383-9130
Ph: 206-396-5981
Fax: 206-396-5985

On-site contact for the Licensor is:

Name: LCDR Ferber, Commanding Officer
Organization: Navy and Marine Corps Reserve Center
Address: 1100 Alexander Avenue
Tacoma, WA 98421
Ph: 206-383-3577
Fax: 206-383-3579

3. Liability. The HCC shall, under the terms and conditions set forth below, indemnify and hold harmless Licensor

from and against any and all losses, expenses, costs, obligations, recoveries, liens, claims, demands or causes of action for death, personal injury or property damage including reasonable attorneys' fees and costs but excluding liability relating to any environmental contamination at the Property ("Damages"), that arise out of or in connection with the willful misconduct or negligence of Licensee, its agents, contractors, and/or subcontractors in entering upon or performing the Work on the Property. The indemnity obligation of the HCC hereunder shall be subject to the following conditions and limitations:

(i) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any proportionate share of Damages caused by the negligence or willful misconduct of Licensor or any other third party other than Licensee's agents, contractors and subcontractors and the HCC shall not be liable and shall have no obligation to indemnify Licensor for losses due to interruptions of business or for any other form of incidental or consequential damages;

(ii) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any Damages that are not covered under or that exceed the specified limits and available proceeds of the commercial general liability insurance policy maintained by the HCC. Such insurance policy shall provide coverage in the aggregate amount of \$2,000,000, with a \$1,000,000 per occurrence limitation. Upon request, the HCC shall furnish Licensor proof of such insurance. Licensee shall maintain the insurance in full force and effect during the term of this Agreement and shall provide prior written notice to Licensor in the event of a material change in or cancellation or nonrenewal of the insurance policy. Should Licensee fail to obtain insurance upon nonrenewal or cancellation, this provision shall be subject to renegotiation by the parties in order to effectuate the intent of this Section 3(ii);

(iii) Licensor shall notify the HCC in writing promptly after Licensor obtains knowledge of the occurrence of any event or the existence of any facts which may become the basis of a claim by Licensor for indemnity pursuant to this section;

(iv) HCC and its agents, contractors, and subcontractors recognize that they are waiving immunity under Industrial Insurance Law, Title 51 RCW, and that this indemnification clause has been mutually negotiated;

(v) the individual members of the HCC shall under no circumstances be liable in any manner to Licensor for

matters addressed by, relating to or arising from this Agreement and the provisions of this Section 3 shall be the sole and exclusive remedy of Licensor with respect to matters addressed by, relating to or arising from this Agreement. For purposes of the enforcement of this provision, the individual members of the HCC shall be construed to be third party beneficiaries of this Agreement.

4. Interference with Licensor's Operations. All activity permitted by this temporary license shall be carried on in such a manner so as not to unduly interfere with Licensor's property and operations or its use of its facilities. Licensee's entry upon Licensor's property shall be coordinated with Licensor in such a way as to minimize such interference. Licensor shall provide the Licensee with any relevant health and safety information applicable to the property if required by Licensor for access. Licensor shall move non-fixed structures or machinery as needed for completion of the Work and shall provide necessary plant training and on-site escort to Licensee and its agents, contractors, and subcontractors if required by Licensor for access.

5. Sampling and Analysis. Licensor or its authorized representative shall have the right, at Licensor's expense, to take split samples of sampling completed on the Property provided enough sampling material is available. Licensor shall give the Licensee one week notice of the desired split sampling and shall cooperate fully in the coordination of the split sampling. Licensee shall have the right, at Licensee's expense, to obtain, within a reasonable period of time, copies of the results of any split samples taken by Licensor. Upon request, Licensor shall also have the right, at Licensor's expense, to obtain, within a reasonable period of time, copies of the sampling results from the Property. It shall be the sole responsibility of the Licensee to lawfully dispose of any material Licensee has gathered as part of the sampling process. Licensor shall have the same responsibility with respect to any split samples taken by Licensor.

6. Effective Date and Term of Agreement. This Agreement shall be effective upon signature by all parties and shall terminate upon receipt by the Licensee of notice that the Work has been completed to the satisfaction of the EPA or such earlier date as EPA may authorize. Licensee shall promptly notify Licensor of such notice. At the completion of the term of this temporary license, Licensee shall restore Licensor's property to a condition as near as possible to the condition of the property before the initiation of the work contemplated herein.

7. Licensor's Warranty. Licensor represents and warrants that it is the owner of or otherwise has authority to grant access to the above described premises.

8. Applicable Law. The parties agree that, without respect to its conflict of laws of jurisprudence, the laws of the State of Washington shall apply to this Agreement.

9. Notice. In order to ensure that subsequent purchasers have notice of this Agreement, Licensor hereby agrees to notify subsequent purchasers of this Agreement and forward a copy of such notice to the Licensee as set forth in Paragraph 2 of this Agreement.

10. Parties Bound. This Agreement shall be binding upon the Parties, their heirs, successors and assigns.

11. Right of Revocation. This License is revocable at any time without notice at the option and discretion of the Licensor or its duly authorized representative.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this agreement as of the day and year opposite each party's signature.

HYLEBOS CLEANUP COMMITTEE

Date: 28 July 1994

By: [Signature]

LICENSOR

Date: 9 June 1994

By: [Signature]

Robert K. Uhrich
Director, Real Estate Division
Real Estate Contracting Officer

For: Navy and Marine Corps Reserve
Center
Owner/Operator

Address: 1100 Alexander Avenue
Tacoma, WA 98421

Concurrence: [Signature]

Commanding Officer,
Navy and Marine Corps Reserve Center

Date: 3 June 94

-5-

Approved as to form and legality

[Signature] OXK 6/9/94
Eric W. Hanger, Assistant Counsel

APPENDIX A

Shoreline Sampling, Event 1B: Collect samples from the shoreline of the Hylebos Waterway (0' to + 12' MLLW) to identify sediments or other materials which may be sources of chemicals or concern to waterway sediments, and also to identify sediment which may require remediation. The sampling will generally involve walking along the shoreline and collecting surface sediment from five to ten locations along each property. The sediment from each property will be composited and submitted for chemical analysis. Currently 63 shoreline composites, covering the entire shoreline, have been identified but not yet reviewed or accepted by EPA. In addition, five properties will have core samples drilled below the mudline in locations to be determined shortly. When they have been accepted by the EPA, the locations will be forwarded to all landowners.

BOGLE & GATES

file
EPA 5-26-94

Sorrin
RECEIVED

JUN 09 1994
MEMORANDUM

BOGLE & GATES

May 3, 1994

14489-48411

TO: Hylebos Waterway Landowners/Operators
FROM: Leonard H. Sorrin
RE: Hylebos Waterway Access Agreement

On behalf of the Hylebos Cleanup Committee ("HCC"), consisting of Occidental Chemical Corp. ASARCO, Inc., the Port of Tacoma, General Metals of Tacoma, Inc., Kaiser Aluminum and Chemical Corp., and ELF Atochem-North America, Inc., I have enclosed the final version of the access agreement relating to the Hylebos Waterway. Many of the changes requested during our February 15, 1994 meeting have been incorporated into the Agreement.

The sampling to take place will be very unintrusive. The vast majority of the property along the Waterway will have several grab samples taken from the nearshore sediment. This sampling will not include any work from a boat: shoreline access will suffice. This work is described in Appendix A of the Right of Entry Agreement. In addition, core samples will be drilled starting at the mudline. With the exception of five properties, all of the core samples will be taken from Port of Tacoma property.

Many of you were interested in the level and type of insurance the HCC would carry related to its access to your property. Recently, the HCC obtained insurance for the contemplated activities. That insurance has been incorporated into the text of the Agreement.

As you know, the HCC has agreed to a timetable for the performance of the Work that will be difficult to satisfy under the best of circumstances. Failure to comply with that schedule could subject the members of the HCC to substantial stipulated penalties.

As a result, it is important to emphasize the significance of having signed agreements by May 15, 1994. If such access is not granted by that date, due to the substantial liability faced by the HCC, the HCC will be forced to request that the EPA acquire access pursuant to its powers under 42 U.S.C. § 9604.

Please fill in the legal description of your property and be sure to provide the name of your on-site coordinator and the person to whom you wish notices pursuant to the Agreement to be sent.

Should any questions arise during your review of the enclosed Agreement, please do not hesitate to call me at (206)621-1557 or Paul Fyglevand at (206)486-7905..

Attachment(s)

Memorandum to Hylebos Waterway Landowners/Operators
May 3, 1994
Page 2

cc: Hylebos Cleanup Committee (w/att.)
Lori Houck (w/att.)
Paul Fuglevand (w/att.)

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made between the Hylebos Cleanup Committee ("HCC" or "Licensee"), and the undersigned owner and/or operator ("Licensor") (collectively the "Parties").

WHEREAS, the HCC, consisting of the Port of Tacoma, Kaiser Aluminum & Chemical Corporation, ASARCO, Inc., Occidental Chemical Corporation, Elf ATOCHEM North America, Inc., and General Metals of Tacoma, Inc., was formed in order to perform pre-remedial design for the Hylebos Waterway located within the Commencement Bay/Near Shore Tideflats Superfund Site, and has entered into an Administrative Order on Consent with the United States Environmental Protection Agency ("EPA"), Docket No. 1093-07-03-104/122 ("AOC"), which includes a Statement of Work ("SOW"), requiring that certain work be performed in connection with the study of the Hylebos Waterway; and

WHEREAS, it will be necessary for Licensee and its collective agents, contractors and subcontractors to enter upon Licensor's property to conduct certain limited environmental work and for purposes of ingress and egress for such work. The work to be performed is set forth in Appendix A of this Agreement (the "Work") and shall not be performed upland of the "higher high water line"; and

WHEREAS, in order to allow the Work to take place, Licensor is willing to grant a temporary license for such entry to Licensee and its agents, contractors, and subcontractors and their consultants, subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties agree as follows:

1. Permission, Location and Access. Subject to the terms and conditions hereinafter set forth, Licensee and its agents, contractors, and subcontractors are granted a temporary license to enter upon Licensor's property, the legal description of which is as follows:

4026 & 4224 MORING VIEW DR. STREET ADDRESS of
ONE & CHARLES MARINAS

and any structures appurtenant thereto (the "Property") for purposes of conducting the Work in accordance with the schedule set forth in Table 1 of the SOW, as may be amended from time to time and for ingress and egress to perform the work. EPA and its designated representatives, the Washington State Department of Ecology and its designated representatives ("DOE"), and the

Commencement Bay Natural Resource Damage Trustees and their designated representatives, are granted a temporary license to the same extent for purposes of supervision of the Work. This temporary license in no way limits the authority of EPA and DOE under applicable federal or state laws to enter said property and to move freely about said property in accordance with such federal or state laws.

2. Entry Upon Property. Licensee and its agents, contractors, and subcontractors shall provide Licensor with at least two calendar weeks notice of the schedule of anticipated dates of access prior to the contemplated start date, and shall promptly notify Licensor of any modifications in the schedule. At least one week prior to each scheduled entry on the Property, Licensor shall provide Licensee with any relevant information regarding site conditions that could be impacted by the scheduled sampling, including, but not limited to, the presence of underground structures, utilities, and outfalls. Licensor will provide Licensee, within one calendar week of any request by Licensee, the known schedule of its shipping and berthing traffic on the Hylebos Waterway for the upcoming month. Any subsequent changes in the shipping and berthing schedule shall be provided to Licensee within 48 hours of receipt by Licensor. All notices to the Licensee shall be directed to:

Paul Fuglevand
HCC Project Manager
Dalton, Olmsted & Fuglevand
19017 120th Avenue N.E., Suite 107
Bothell, Washington 98011
Ph: (206) 486-7905
Fax: (206) 486-7651

All notices to the Licensor shall be directed to:

Name: DONALD S. OLSON PRESIDENT
Organization: OLE & CHARLIE'S MARINAS
Address: 3568 W. MARGINAL WAY S.W.
SEATTLE WA 98106
Ph: 206 937-3400
Fax: _____

On-site contact for the Licensor is:

Name: STEVE OLSON
Organization: SOMC
Address: 4224 MARINE VIEW DR.
TOCOMA WA.
Ph: 272-1173
Fax: _____

3. Liability. The HCC shall, under the terms and conditions set forth below, indemnify and hold harmless Licensor from and against any and all losses, expenses, costs, obligations, recoveries, liens, claims, demands or causes of action for death, personal injury or property damage including reasonable attorneys' fees and costs but excluding liability relating to any environmental contamination at the Property ("Damages"), that arise out of or in connection with the willful misconduct or negligence of Licensee, its agents, contractors, and/or subcontractors in entering upon or performing the Work on the Property. The indemnity obligation of the HCC hereunder shall be subject to the following conditions and limitations:

(i) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any proportionate share of Damages caused the negligence or willful misconduct of Licensor or any other third party other than Licensee's agents, contractors and subcontractors and the HCC shall not be liable and shall have no obligation to indemnify Licensor for losses due to interruptions of business or for any other form of incidental or consequential damages;

(ii) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any Damages that are not covered under or that exceed the specified limits and available proceeds of the commercial general liability insurance policy maintained by the HCC. Such insurance policy shall provide coverage in the aggregate amount of \$2,000,000, with a \$1,000,000 per occurrence limitation. Upon request, the HCC shall furnish Licensor proof of such insurance;

(iii) Licensor shall notify the HCC in writing promptly after Licensor obtains knowledge of the occurrence of any event or the existence of any facts which may become the basis of a claim by Licensor for indemnity pursuant to this section;

(iv) HCC and its agents, contractors, and subcontractors recognize that they are waiving immunity under Industrial Insurance Law, Title 51 RCW, and that this indemnification clause has been mutually negotiated;

(v) the individual members of the HCC shall under no circumstances be liable in any manner to Licensor for matters addressed by, relating to or arising from this Agreement and the provisions of this Section 3 shall be the sole and exclusive remedy of Licensor with respect to matters addressed by, relating to or arising from this Agreement. For purposes of the enforcement of this provision, the individual members of the HCC shall be

construed to be third party beneficiaries of this Agreement.

4. Interference with Licensor's Operations. All activity permitted by this temporary license shall be carried on in such a manner so as not to unduly interfere with Licensor's property and operations or its use of its facilities. Licensee's entry upon Licensor's property shall be coordinated with Licensor in such a way as to minimize such interference. Licensor shall provide the Licensee with any relevant health and safety information applicable to the property if required by Licensor for access. Licensor shall move non-fixed structures or machinery as needed for completion of the Work and shall provide necessary plant training and on-site escort to Licensee and its agents, contractors, and subcontractors if required by Licensor for access.

5. Sampling and Analysis. Licensor or its authorized representative shall have the right, at Licensor's expense, to take split samples of the shoreline (Event 1B) sampling completed on the Property provided enough sampling material is available. Licensor shall give the Licensee one week notice of the desired split sampling and shall cooperate fully in the coordination of the split sampling. Licensee shall have the right, at Licensee's expense, to obtain, within a reasonable period of time, copies of the results of any split samples taken by Licensor. Upon request, Licensor shall also have the right, at Licensor's expense, to obtain, within a reasonable period of time, copies of the sampling results from the Property. It shall be the sole responsibility of the Licensee to lawfully dispose of any material Licensee has gathered as part of the sampling process. Licensor shall have the same responsibility with respect to any split samples taken by Licensor.

6. Effective Date and Term of Agreement. This Agreement shall be effective upon signature by all parties and shall terminate upon receipt by the Licensee of notice that the Work has been completed to the satisfaction of the EPA or such earlier date as EPA may authorize. Licensee shall promptly notify Licensor of such notice. At the completion of the term of this temporary license, Licensee shall restore Licensor's property to a condition as near as possible to the condition of the property before the initiation of the work contemplated herein. Any monitoring equipment installed on the Property shall be removed in compliance with applicable rules and regulations.

7. Licensor's Warranty. Licensor represents and warrants that it is the owner of or otherwise has authority to grant access to the above described premises.

8. Applicable Law. The parties agree that, without respect to its conflict of laws jurisprudence, the laws of the State of Washington shall apply to this Agreement.

9. Recording. In order to ensure that subsequent purchasers have notice of this Agreement, Licenser hereby agrees to record this Agreement with the Pierce County Auditor and forward a conformed copy to the Licensee as set forth in Paragraph 2 of this Agreement. Upon receipt of written notice pursuant to Paragraph 6 of this Agreement of the termination of access granted hereunder, Licenser may, at Licenser's option and expense, cause such termination notice to be similarly recorded.

10. Parties Bound. This Agreement shall be binding upon the Parties, their heirs, successors and assigns.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this agreement as of the day and year opposite each party's signature.

HYLEBOS CLEANUP COMMITTEE

Date: 28 July 1994

By: 

LICENSOR

Date: May 24, 1994

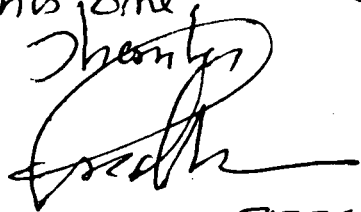
By: 

For: OLE & CHARLES MARZINOS
Owner/Operator

Address: _____

5.24.94
RGR

I understand this is not the latest copy of the agreement. I'm signing this one because I'll be out of town and unable to sign the latest one. I expect to be bound by the final and latest access agreement negotiated by the MINOR PRP group if any changes are made from this one.

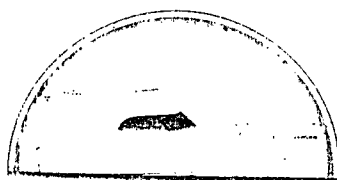


- 5 -

PRESIDENT OF C MARZINOS

APPENDIX A

Shoreline Sampling, Event 1B: Collect samples from the shoreline of the Hylebos Waterway (0' to + 12' MLLW) to identify sediments or other materials which may be sources of chemicals or concern to waterway sediments, and also to identify sediment which may require remediation. The sampling will generally involve walking along the shoreline and collecting surface sediment from five to ten locations along each property. The sediment from each property will be composited and submitted for chemical analysis. Currently 63 shoreline composites, covering the entire shoreline, have been identified but not yet reviewed or accepted by EPA. In addition, five properties will have core samples drilled below the mudline in locations to be determined shortly. When they have been accepted by the EPA, the locations will be forwarded to all landowners.



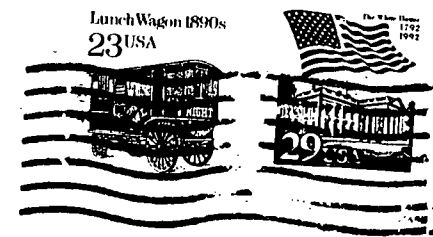
OFFICE CHAIRS MADRID

POSTAL MARKING

SEATTLE LOCATION
19017 120 AVE NE STE 107
BOTHELL, WA 98011



Paul Fuglevand
HCC Project Manager
Dalton Olmsted & Fuglevand
19017 120 Ave NE Ste 107
Bothell Wa 98011



May 3, 1994

14489-48411

TO: Hylebos Waterway Landowners/Operators
FROM: Leonard H. Sorrin
RE: Hylebos Waterway Access Agreement

RECEIVED
SEP 13 1994
SUPERFUND REMEDIAL BRANCH

On behalf of the Hylebos Cleanup Committee ("HCC"), consisting of Occidental Chemical Corp. ASARCO, Inc., the Port of Tacoma, General Metals of Tacoma, Inc., Kaiser Aluminum and Chemical Corp., and ELF Atochem-North America, Inc., I have enclosed the final version of the access agreement relating to the Hylebos Waterway. Many of the changes requested during our February 15, 1994 meeting have been incorporated into the Agreement.

The sampling to take place will be very unintrusive. The vast majority of the property along the Waterway will have several grab samples taken from the nearshore sediment. This sampling will not include any work from a boat: shoreline access will suffice. This work is described in Appendix A of the Right of Entry Agreement. In addition, core samples will be drilled starting at the mudline. With the exception of five properties, all of the core samples will be taken from Port of Tacoma property.

Many of you were interested in the level and type of insurance the HCC would carry related to its access to your property. Recently, the HCC obtained insurance for the contemplated activities. That insurance has been incorporated into the text of the Agreement.

As you know, the HCC has agreed to a timetable for the performance of the Work that will be difficult to satisfy under the best of circumstances. Failure to comply with that schedule could subject the members of the HCC to substantial stipulated penalties.

As a result, it is important to emphasize the significance of having signed agreements by May 15, 1994. If such access is not granted by that date, due to the substantial liability faced by the HCC, the HCC will be forced to request that the EPA acquire access pursuant to its powers under 42 U.S.C. § 9604.

Please fill in the legal description of your property and be sure to provide the name of your on-site coordinator and the person to whom you wish notices pursuant to the Agreement to be sent.

Should any questions arise during your review of the enclosed Agreement, please do not hesitate to call me at (206)621-1557 or Paul Fyglevand at (206)486-7905..

Attachment(s)

Memorandum to Hylebos Waterway Landowners/Operators
May 3, 1994
Page 2

cc: Hylebos Cleanup Committee (w/att.)
Lori Houck (w/att.)
Paul Fuglevand (w/att.)

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made between the Hylebos Cleanup Committee ("HCC" or "Licensee"), and the undersigned owner and/or operator ("Licensor") (collectively the "Parties").

WHEREAS, the HCC, consisting of the Port of Tacoma, Kaiser Aluminum & Chemical Corporation, ASARCO, Inc., Occidental Chemical Corporation, Elf ATOCHEM North America, Inc., and General Metals of Tacoma, Inc., was formed in order to perform pre-remedial design for the Hylebos Waterway located within the Commencement Bay/Near Shore Tideflats Superfund Site, and has entered into an Administrative Order on Consent with the United States Environmental Protection Agency ("EPA"), Docket No. 1093-07-03-104/122 ("AOC"), which includes a Statement of Work ("SOW"), requiring that certain work be performed in connection with the study of the Hylebos Waterway; and

WHEREAS, it will be necessary for Licensee and its collective agents, contractors and subcontractors to enter upon Licensor's property to conduct certain limited environmental work and for purposes of ingress and egress for such work. The work to be performed is set forth in Appendix A of this Agreement (the "Work") and shall not be performed upland of the "higher high water line"; and

WHEREAS, in order to allow the Work to take place, Licensor is willing to grant a temporary license for such entry to Licensee and its agents, contractors, and subcontractors and their consultants, subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties agree as follows:

1. Permission, Location and Access. Subject to the terms and conditions hereinafter set forth, Licensee and its agents, contractors, and subcontractors are granted a temporary license to enter upon Licensor's property, the legal description of which is as follows:

and any structures appurtenant thereto (the "Property") for purposes of conducting the Work in accordance with the schedule set forth in Table 1 of the SOW, as may be amended from time to time and for ingress and egress to perform the work. EPA and its designated representatives, the Washington State Department of Ecology and its designated representatives ("DOE"), and the

Commencement Bay Natural Resource Damage Trustees and their designated representatives, are granted a temporary license to the same extent for purposes of supervision of the Work. This temporary license in no way limits the authority of EPA and DOE under applicable federal or state laws to enter said property and to move freely about said property in accordance with such federal or state laws.

2. Entry Upon Property. Licensee and its agents, contractors, and subcontractors shall provide Licensor with at least two calendar weeks notice of the schedule of anticipated dates of access prior to the contemplated start date, and shall promptly notify Licensor of any modifications in the schedule. At least one week prior to each scheduled entry on the Property, Licensor shall provide Licensee with any relevant information regarding site conditions that could be impacted by the scheduled sampling, including, but not limited to, the presence of underground structures, utilities, and outfalls. Licensor will provide Licensee, within one calendar week of any request by Licensee, the known schedule of its shipping and berthing traffic on the Hylebos Waterway for the upcoming month. Any subsequent changes in the shipping and berthing schedule shall be provided to Licensee within 48 hours of receipt by Licensor. All notices to the Licensee shall be directed to:

Paul Fuglevand
HCC Project Manager
Dalton, Olmsted & Fuglevand
19017 120th Avenue N.E., Suite 107
Bothell, Washington 98011
Ph: (206) 486-7905
Fax: (206) 486-7651

All notices to the Licensor shall be directed to:

Name: Norman Nordlund
Organization: Nordlund Boat Co
Address: 1621 TAYLOR WAY
TALOMA WA
Ph: 627-0605
Fax: 627-0785

On-site contact for the Licensor is:

Name: NORMAN NORDLUND
Organization: _____
Address: SAME
Ph: _____
Fax: _____

3. Liability. The HCC shall, under the terms and conditions set forth below, indemnify and hold harmless Licensor from and against any and all losses, expenses, costs, obligations, recoveries, liens, claims, demands or causes of action for death, personal injury or property damage including reasonable attorneys' fees and costs but excluding liability relating to any environmental contamination at the Property ("Damages"), that arise out of or in connection with the willful misconduct or negligence of Licensee, its agents, contractors, and/or subcontractors in entering upon or performing the Work on the Property. The indemnity obligation of the HCC hereunder shall be subject to the following conditions and limitations:

(i) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any proportionate share of Damages caused the negligence or willful misconduct of Licensor or any other third party other than Licensee's agents, contractors and subcontractors and the HCC shall not be liable and shall have no obligation to indemnify Licensor for losses due to interruptions of business or for any other form of incidental or consequential damages;

(ii) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any Damages that are not covered under or that exceed the specified limits and available proceeds of the commercial general liability insurance policy maintained by the HCC. Such insurance policy shall provide coverage in the aggregate amount of \$2,000,000, with a \$1,000,000 per occurrence limitation. Upon request, the HCC shall furnish Licensor proof of such insurance;

(iii) Licensor shall notify the HCC in writing promptly after Licensor obtains knowledge of the occurrence of any event or the existence of any facts which may become the basis of a claim by Licensor for indemnity pursuant to this section;

(iv) HCC and its agents, contractors, and subcontractors recognize that they are waiving immunity under Industrial Insurance Law, Title 51 RCW, and that this indemnification clause has been mutually negotiated;

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construed to be third party beneficiaries of this Agreement.

4. Interference with Licensors Operations. All activity permitted by this temporary license shall be carried on in such a manner so as not to unduly interfere with Licensor's property and operations or its use of its facilities. Licensee's entry upon Licensor's property shall be coordinated with Licensor in such a way as to minimize such interference. Licensor shall provide the Licensee with any relevant health and safety information applicable to the property if required by Licensor for access. Licensor shall move non-fixed structures or machinery as needed for completion of the Work and shall provide necessary plant training and on-site escort to Licensee and its agents, contractors, and subcontractors if required by Licensor for access.

5. Sampling and Analysis. Licensor or its authorized representative shall have the right, at Licensor's expense, to take split samples of the shoreline (Event 1B) sampling completed on the Property provided enough sampling material is available. Licensor shall give the Licensee one week notice of the desired split sampling and shall cooperate fully in the coordination of the split sampling. Licensee shall have the right, at Licensee's expense, to obtain, within a reasonable period of time, copies of the results of any split samples taken by Licensor. Upon request, Licensor shall also have the right, at Licensor's expense, to obtain, within a reasonable period of time, copies of the sampling results from the Property. It shall be the sole responsibility of the Licensee to lawfully dispose of any material Licensee has gathered as part of the sampling process. Licensor shall have the same responsibility with respect to any split samples taken by Licensor.

6. Effective Date and Term of Agreement. This Agreement shall be effective upon signature by all parties and shall terminate upon receipt by the Licensee of notice that the Work has been completed to the satisfaction of the EPA or such earlier date as EPA may authorize. Licensee shall promptly notify Licensor of such notice. At the completion of the term of this temporary license, Licensee shall restore Licensor's property to a condition as near as possible to the condition of the property before the initiation of the work contemplated herein. Any monitoring equipment installed on the Property shall be removed in compliance with applicable rules and regulations.

7. Licensor's Warranty. Licensor represents and warrants that it is the owner of or otherwise has authority to grant access to the above described premises.

8. Applicable Law. The parties agree that, without respect to its conflict of laws jurisprudence, the laws of the State of Washington shall apply to this Agreement.

9. Recording. In order to ensure that subsequent purchasers have notice of this Agreement, Licensor hereby agrees to record this Agreement with the Pierce County Auditor and forward a conformed copy to the Licensee as set forth in Paragraph 2 of this Agreement. Upon receipt of written notice pursuant to Paragraph 6 of this Agreement of the termination of access granted hereunder, Licensor may, at Licensor's option and expense, cause such termination notice to be similarly recorded.

10. Parties Bound. This Agreement shall be binding upon the Parties, their heirs, successors and assigns.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this agreement as of the day and year opposite each party's signature.

HYLEBOS CLEANUP COMMITTEE

Date: 28 July 1994

By: [Signature]

LICENSOR

Date: 5/10/94

By: Norman Nordlund

For: Owner
Owner/Operator

Address: _____

APPENDIX A

Shoreline Sampling, Event 1B: Collect samples from the shoreline of the Hylebos Waterway (0' to + 12' MLLW) to identify sediments or other materials which may be sources of chemicals or concern to waterway sediments, and also to identify sediment which may require remediation. The sampling will generally involve walking along the shoreline and collecting surface sediment from five to ten locations along each property. The sediment from each property will be composited and submitted for chemical analysis. Currently 63 shoreline composites, covering the entire shoreline, have been identified but not yet reviewed or accepted by EPA. In addition, five properties will have core samples drilled below the mudline in locations to be determined shortly. When they have been accepted by the EPA, the locations will be forwarded to all landowners.

Sam

RECEIVED
JUN 06 1994
BOGLE & GATES

RECEIVED
SEP 13 1994
SUPERFUND REMEDIAL BRANCH



LETTER-LIMINATOR

FORM 11003

REORDER FROM RAPIDFORMS INC. 501 BENIGNO BLVD. BELLMAWR, NJ 08031
CALL TOLL FREE 800-257-8354; FAX NO. 1-800-451-8113

TO

LEN SORAIN

BOGLE + GATHS

FROM

Norm Webb

MANUFACTURING MANAGEMENT INC.

4927 NW Front Avenue

Portland, OR 97210

(503) 227-4313

SUBJECT:

Right of Entry Agreement

FOLD HERE

DATE

2 JUN 94

MESSAGE

THE SUBJECT DOCS FOR GENERAL METALS OF TACOMA AND
MILES TRANSPORT SERVICES ARE ATTACHED FOR YOUR COLLECTION.

REGARDS,

SIGNED

DATE

REPLY

SIGNED

FORM 11003 RAPIDFORMS, INC., BELLMAWR, N.J. 08031

LETTER-LIMINATOR

RECIPIENT: RETAIN WHITE COPY, RETURN PINK COPY

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made between the Hylebos Cleanup Committee ("HCC" or "Licensee"), and the undersigned owner and/or operator ("Licensor") (collectively the "Parties").

WHEREAS, the HCC, consisting of the Port of Tacoma, Kaiser Aluminum & Chemical Corporation, ASARCO, Inc., Occidental Chemical Corporation, Elf ATOCHEM North America, Inc., and General Metals of Tacoma, Inc., was formed in order to perform pre-remedial design for the Hylebos Waterway located within the Commencement Bay/Near Shore Tidelands Superfund Site, and has entered into an Administrative Order on Consent with the United States Environmental Protection Agency ("EPA"), Docket No. 1093-07-03-104/122 ("AOC"), which includes a Statement of Work ("SOW"), requiring that certain work be performed in connection with the study of the Hylebos Waterway; and

WHEREAS, it will be necessary for Licensee and its collective agents, contractors and subcontractors to enter upon Licensor's property to conduct certain limited environmental work and for purposes of ingress and egress for such work. The work to be performed is set forth in Appendix A of this Agreement (the "Work") and shall not be performed upland of the "higher high water line"; and

WHEREAS, in order to allow the Work to take place, Licensor is willing to grant a temporary license for such entry to Licensee and its agents, contractors, and subcontractors and their consultants, subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties agree as follows:

1. Permission, Location and Access. Subject to the terms and conditions hereinafter set forth, Licensee and its agents, contractors, and subcontractors are granted a temporary license to enter upon Licensor's property, the legal description of which is as follows:

(SEE APPENDIX B)

and any structures appurtenant thereto (the "Property") for purposes of conducting the Work in accordance with the schedule set forth in Table 1 of the SOW, as may be amended from time to time and for ingress and egress to perform the work. EPA and its designated representatives, the Washington State Department of Ecology and its designated representatives ("DOE"), and the

Commencement Bay Natural Resource Damage Trustees and their designated representatives, are granted a temporary license to the same extent for purposes of supervision of the Work. This temporary license in no way limits the authority of EPA and DOE under applicable federal or state laws to enter said property and to move freely about said property in accordance with such federal or state laws.

2. Entry Upon Property. Licensee and its agents, contractors, and subcontractors shall provide Licensors with at least two calendar weeks notice of the schedule of anticipated dates of access prior to the contemplated start date, and shall promptly notify Licensors of any modifications in the schedule. At least one week prior to each scheduled entry on the Property, Licensors shall provide Licensee with any relevant information regarding site conditions that could be impacted by the scheduled sampling, including, but not limited to, the presence of underground structures, utilities, and outfalls. Licensors will provide Licensee, within one calendar week of any request by Licensee, the known schedule of its shipping and berthing traffic on the Hylebos Waterway for the upcoming month. Any subsequent changes in the shipping and berthing schedule shall be provided to Licensee within 48 hours of receipt by Licensors. All notices to the Licensee shall be directed to:

Paul Fuglevand
HCC Project Manager
Dalton, Olmsted & Fuglevand
19017 120th Avenue N.E., Suite 107
Bothell, Washington 98011
Ph: (206) 486-7905
Fax: (206) 486-7651

All notices to the Licensors shall be directed to:

Name: NORMAN D. WEBB
Organization: MME GROUP
Address: 4927 NW FRONT AVE
PORTLAND, OR 97210
Ph: 503-227-4313
Fax: 503-227-7925

On-site contact for the Licensors is:

Name: DENNIS GRIFFITH
Organization: GENERAL MARINE OF TACOMA
Address: 1902 MARINE VIEW DRIVE
TACOMA, WA 98422
Ph: 206-572-4000
Fax: 206-572-0314

3. Liability. The HCC shall, under the terms and conditions set forth below, indemnify and hold harmless Licensor from and against any and all losses, expenses, costs, obligations, recoveries, liens, claims, demands or causes of action for death, personal injury or property damage including reasonable attorneys' fees and costs but excluding liability relating to any environmental contamination at the Property ("Damages"), that arise out of or in connection with the willful misconduct or negligence of Licensee, its agents, contractors, and/or subcontractors in entering upon or performing the Work on the Property. The indemnity obligation of the HCC hereunder shall be subject to the following conditions and limitations:

(i) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any proportionate share of Damages caused the negligence or willful misconduct of Licensor or any other third party other than Licensee's agents, contractors and subcontractors and the HCC shall not be liable and shall have no obligation to indemnify Licensor for losses due to interruptions of business or for any other form of incidental or consequential damages;

(ii) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any Damages that are not covered under or that exceed the specified limits and available proceeds of the commercial general liability insurance policy maintained by the HCC. Such insurance policy shall provide coverage in the aggregate amount of \$2,000,000, with a \$1,000,000 per occurrence limitation. Upon request, the HCC shall furnish Licensor proof of such insurance;

(iii) Licensor shall notify the HCC in writing promptly after Licensor obtains knowledge of the occurrence of any event or the existence of any facts which may become the basis of a claim by Licensor for indemnity pursuant to this section;

(iv) HCC and its agents, contractors, and subcontractors recognize that they are waiving immunity under Industrial Insurance Law, Title 51 RCW, and that this indemnification clause has been mutually negotiated;

(v) the individual members of the HCC shall under no circumstances be liable in any manner to Licensor for matters addressed by, relating to or arising from this Agreement and the provisions of this Section 3 shall be the sole and exclusive remedy of Licensor with respect to matters addressed by, relating to or arising from this Agreement. For purposes of the enforcement of this provision, the individual members of the HCC shall be

construed to be third party beneficiaries of this Agreement.

4. Interference with Licensor's Operations. All activity permitted by this temporary license shall be carried on in such a manner so as not to unduly interfere with Licensor's property and operations or its use of its facilities. Licensee's entry upon Licensor's property shall be coordinated with Licensor in such a way as to minimize such interference. Licensor shall provide the Licensee with any relevant health and safety information applicable to the property if required by Licensor for access. Licensor shall move non-fixed structures or machinery as needed for completion of the Work and shall provide necessary plant training and on-site escort to Licensee and its agents, contractors, and subcontractors if required by Licensor for access.

5. Sampling and Analysis. Licensor or its authorized representative shall have the right, at Licensor's expense, to take split samples of the shoreline (Event 1B) sampling completed on the Property provided enough sampling material is available. Licensor shall give the Licensee one week notice of the desired split sampling and shall cooperate fully in the coordination of the split sampling. Licensee shall have the right, at Licensee's expense, to obtain, within a reasonable period of time, copies of the results of any split samples taken by Licensor. Upon request, Licensor shall also have the right, at Licensor's expense, to obtain, within a reasonable period of time, copies of the sampling results from the Property. It shall be the sole responsibility of the Licensee to lawfully dispose of any material Licensee has gathered as part of the sampling process. Licensor shall have the same responsibility with respect to any split samples taken by Licensor.

6. Effective Date and Term of Agreement. This Agreement shall be effective upon signature by all parties and shall terminate upon receipt by the Licensee of notice that the Work has been completed to the satisfaction of the EPA or such earlier date as EPA may authorize. Licensee shall promptly notify Licensor of such notice. At the completion of the term of this temporary license, Licensee shall restore Licensor's property to a condition as near as possible to the condition of the property before the initiation of the work contemplated herein. Any monitoring equipment installed on the Property shall be removed in compliance with applicable rules and regulations.

7. Licensor's Warranty. Licensor represents and warrants that it is the owner of or otherwise has authority to grant access to the above described premises.

8. Applicable Law. The parties agree that, without respect to its conflict of laws jurisprudence, the laws of the State of Washington shall apply to this Agreement.

9. Recording. In order to ensure that subsequent purchasers have notice of this Agreement, Licensors hereby agree to record this Agreement with the Pierce County Auditor and forward a conformed copy to the Licensee as set forth in Paragraph 2 of this Agreement. Upon receipt of written notice pursuant to Paragraph 6 of this Agreement of the termination of access granted hereunder, Licensors may, at Licensors' option and expense, cause such termination notice to be similarly recorded.

10. Parties Bound. This Agreement shall be binding upon the Parties, their heirs, successors and assigns.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this agreement as of the day and year opposite each party's signature.

HYLEBOS CLEANUP COMMITTEE

Date: 28 JULY 1994

By: [Signature]

LICENSOR

Date: 31 MAY 94

By: Ned H. Buhler V.P.

For: General Metals of Tacoma, Inc.
Owner/Operator

Address: 1902 MARINE VIEW DRIVE
TACOMA, WA 98422

APPENDIX A

Shoreline Sampling, Event 1B: Collect samples from the shoreline of the Hylebos Waterway (0' to + 12' MLLW) to identify sediments or other materials which may be sources of chemicals or concern to waterway sediments, and also to identify sediment which may require remediation. The sampling will generally involve walking along the shoreline and collecting surface sediment from five to ten locations along each property. The sediment from each property will be composited and submitted for chemical analysis. Currently 63 shoreline composites, covering the entire shoreline, have been identified but not yet reviewed or accepted by EPA. In addition, five properties will have core samples drilled below the mudline in locations to be determined shortly. When they have been accepted by the EPA, the locations will be forwarded to all landowners.

APPENDIX B

GENERAL METALS OF TACOMA

PARCEL A:

Commencing at the Southeast corner of the Northeast quarter of the Northwest quarter of SECTION 36, TOWNSHIP 21 NORTH, RANGE 3 EAST of the W.M., in Pierce County, Washington; thence North $0^{\circ}16'35''$ West along the East line of said subdivision a distance of 211.61 feet to the center line of the Hylebos Access Road right of way as now located; thence on an angle to the left of $54^{\circ}46'53''$, along the said center line a distance of 31.23 feet to the P.I. of a curve to the left; thence on an angle to the left of $11^{\circ}48'30''$ along the center line a distance of 886.06 feet to a point; thence on an angle to the left of $71^{\circ}23'37''$ and South $41^{\circ}44'25''$ West a distance of 52.76 feet to a point on the Southerly right of way of the said right of way and the true point of beginning of this description; thence continuing South $41^{\circ}44'25''$ West a distance of 636.66 feet to a point on the Northerly pierhead line of the Hylebos Waterway; thence North $48^{\circ}15'35''$ West along the said pierhead line a distance of 26.79 feet; thence North $0^{\circ}01'12''$ West along the West line of said subdivision a distance of 646.95 feet to a point on the Southerly right-of-way line of the said Hylebos Access Road right-of-way; thence South $66^{\circ}51'53''$ East along the said Southerly right-of-way line a distance of 482.90 feet to the true point of beginning.

PARCEL B:

Commencing at the Northeast corner of the Southeast quarter of the Northwest quarter of SECTION 36, TOWNSHIP 21 NORTH, RANGE 3 EAST of the W.M., in Pierce County, Washington; thence North 88°18'14" West along the North line of said subdivision a distance of 369.31 feet to a point; thence North 41°44'25" East a distance of 301.96 feet to a point on the Southerly right-of-way line of the Hylebos Access Road as now located; thence South 66°51'58" East along the said right-of-way line a distance of 34.22 feet to the P.C. of a curve to the right having a radius on the right-of-way line of 904.96 feet; thence along the arc of said curve to the right a distance of 165.22 feet; thence South 41°44'25" West a distance of 929.82 feet to a point on the Northerly pierhead line of the Hylebos Waterway; thence North 48°15'35" West along the said pierhead line a distance of 192.90 feet; thence North 41°44'25" East a distance of 579.30 feet to the true point of beginning.

PARCEL D:

Commencing at a brass monument at the Northwest corner of the Southwest quarter of the Northeast quarter of SECTION 36, TOWNSHIP 21 NORTH, RANGE 3 EAST of the W.M., in Pierce County, Washington; thence on a bearing of South 88°59'24" East along the North line of said Southwest quarter of the Northeast quarter of said Section 36 for a distance of 145.41 feet to the true point of beginning of this description; thence on an angle to the left of 49°16'11" on a bearing of North 41°44'25" East for a distance of 41.99 feet to a point on the Southwesterly right of way line of the Hylebos Access Road; thence on an angle to the right of 83°12'07" on a bearing of South 55°03'28" East following said right of way line for a distance of 100.71 feet to a point; thence on an angle to the right of 96°47'53" on a bearing of South 41°44'25" West for a distance of 965.83 feet to a point on the Northeasterly pierhead line of the Hylebos Waterway; thence on an angle to the right of 90°00'00" on a bearing of North 48°15'35" West following said pierhead line for a distance of 100 feet to a point; thence on an angle to the right of 90°00'00" on a bearing of North 41°44'25" East for a distance of 911.92 feet to the true point of beginning.

PARCEL E:

Commencing at a brass monument at the Northwest corner of the Southwest quarter of the Northeast quarter of SECTION 36, TOWNSHIP 21 NORTH, RANGE 3 EAST of the W.M., in Pierce County, Washington; thence on a bearing of South 88°59'24" East along the North line of said Southwest quarter of the Northeast quarter of said Section 36 for a distance of 145.41 feet to the true point of beginning; thence on an angle to the left of 49°16'11" on a bearing of North 41°44'25" East for a distance of 41.99 feet to a point on the Southwesterly right of way line of the Hylebos Access Road; thence on an angle to the left of 96°47'53" on a bearing of North 55°03'28" West following said right of way line for a distance of 180.13 feet to the point of curvature of a curve to the left having a radius of 904.93 feet; thence following said curve to the left, through an angle of 1°20'50" for a distance of 21.28 feet to a point; thence on an angle to the left on a bearing of South 41°44'25" West for a distance of 929.82 feet to a point on the Northeasterly pierhead line of Hylebos Waterway; thence on an angle to the left of 90°00'00" on a bearing of South 48°15'35" East following said pierhead line for a distance of 200 feet to a point; thence on an angle to the left of 90°00'00" on a bearing of North 41°44'25" East for a distance of 911.92 feet to the true point of beginning.

PARCEL A:

Beginning at the Northeast corner of the Southeast quarter of the Northwest quarter of SECTION 36, TOWNSHIP 21 NORTH, RANGE 3 EAST of the W.M., in Pierce County, Washington; thence North $88^{\circ}18'14''$ West along the North line of the said Southeast quarter of the Northwest quarter a distance of 401.97 feet to the true point of beginning of this description; thence on an angle to the left of $49^{\circ}57'21''$ South $41^{\circ}44'25''$ West a distance of 558.29 feet to a point on the Northerly pierhead line of the Hylebos Waterway as now laid out; thence on an angle to the right of 90° North $48^{\circ}15'35''$ West a distance of 700 feet to a point on the said pierhead line; thence on an angle to the right of 90° , North $41^{\circ}44'25''$ East a distance of 636.66 feet to a point on the Southerly right of way line of a proposed road; thence on an angle to the right of $71^{\circ}23'29''$, South $66^{\circ}52'06''$ East along the said right of way a distance of 738.61 feet; thence on an angle to the right of $108^{\circ}36'31''$ South $41^{\circ}44'25''$ West a distance of 314.06 feet to true point of beginning.

30729-3

PARCEL B:

A non-exclusive easement for right of way for the construction, use and maintenance of a railroad spur over the following described strip of land:

A strip of land 14.0 feet in width lying 7.0 feet on either side of the following described centerline: Commencing at the Northwest corner of the Southwest quarter of the Northeast quarter of SECTION 36, TOWNSHIP 21 NORTH, RANGE 3 EAST of the W.M., in Pierce County, Washington; thence South $88^{\circ}59'24''$ East along the North line of said subdivision a distance of 239.81 feet to the center line of the City of Tacoma municipal beltline railroad tract as now located; thence North $55^{\circ}03'36''$ West along the said center line a distance of 220.28 feet; thence North $63^{\circ}13'51''$ West a distance of 44.63 feet to the point of curvature of a curve to the left having a radius of 441.68 feet; thence along said curve to the left a distance of 41.97 feet to the right of way line of a proposed road and the true point of beginning; thence continuing along said curve to the left a distance of 263.09 feet to the Southeasterly property line of the property described in Parcel A, above, as granted to Leslie P. Sussman and Sophie L. Sussman, husband and wife, by instrument recorded under Auditor's No. 2126314.

PARCEL C:

Commencing at the Northeast corner of the Southeast quarter of the Northwest quarter of SECTION 36, TOWNSHIP 21 NORTH, RANGE 3 EAST of the W.M., in Pierce County, Washington; thence North $88^{\circ}18'14''$ West along the North line of said Southeast quarter of the Northwest quarter a distance of 369.31 feet to the true point of beginning; thence South $41^{\circ}44'25''$ West a distance of 579.30 feet to a point on the Northerly pierhead line of the Hylebos Waterway; thence North $48^{\circ}15'35''$ West along the said pierhead line a distance of 25.00 feet; thence North $41^{\circ}44'25''$ East a distance of 872.35 feet to a point on the Southerly right-of-way line of a proposed road; thence South $66^{\circ}52'06''$ East along the said right-of-way line a distance of 26.54 feet; thence South $41^{\circ}44'25''$ West a distance of 301.96 feet to the true point of beginning.

Semin

RECEIVED
JUN - 3 1994
BOGLE & GATES

RECEIVED
SEP 13 1994
SUPERFUND REMEDIAL BRANCH

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made between the Hylebos Cleanup Committee ("HCC" or "Licensee"), and the undersigned owner and/or operator ("Licensor") (collectively the "Parties").

WHEREAS, the HCC, consisting of the Port of Tacoma, Kaiser Aluminum & Chemical Corporation, ASARCO, Inc., Occidental Chemical Corporation, Elf ATOCHEM North America, Inc., and General Metals of Tacoma, Inc., was formed in order to perform pre-remedial design for the Hylebos Waterway located within the Commencement Bay/Near Shore Tideflats Superfund Site, and has entered into an Administrative Order on Consent with the United States Environmental Protection Agency ("EPA"), Docket No. 1093-07-03-104/122 ("AOC"), which includes a Statement of Work ("SOW"), requiring that certain work be performed in connection with the study of the Hylebos Waterway; and

WHEREAS, it will be necessary for Licensee and its collective agents, contractors and subcontractors to enter upon Licensor's property to conduct certain limited environmental work and for purposes of ingress and egress for such work. The work to be performed is set forth in Appendix A of this Agreement (the "Work") and shall not be performed upland of the "higher high water line"; and

WHEREAS, in order to allow the Work to take place, Licensor is willing to grant a temporary license for such entry to Licensee and its agents, contractors, and subcontractors and their consultants, subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties agree as follows:

1. Permission, Location and Access. Subject to the terms and conditions hereinafter set forth, Licensee and its agents, contractors, and subcontractors are granted a temporary license to enter upon Licensor's property, the legal description of which is as follows:

SEE EXHIBIT "A" ATTACHED

and any structures appurtenant thereto (the "Property") for purposes of conducting the Work in accordance with the schedule set forth in Table 1 of the SOW, as may be amended from time to time and for ingress and egress to perform the work. EPA and its designated representatives, the Washington State Department of Ecology and its designated representatives ("DOE"), and the Commencement Bay Natural Resource Damage Trustees and their

designated representatives, are granted a temporary license to the same extent for purposes of supervision of the Work. This temporary license in no way limits the authority of EPA and DOE under applicable federal or state laws to enter said property and to move freely about said property in accordance with such federal or state laws.

2. Entry Upon Property. Licensee and its agents, contractors, and subcontractors shall provide Licensor with at least two calendar weeks notice of the schedule of anticipated dates of access prior to the contemplated start date, and shall promptly notify Licensor of any modifications in the schedule. At least one week prior to each scheduled entry on the Property, Licensor shall provide Licensee with any relevant information regarding site conditions that could be impacted by the scheduled sampling, including, but not limited to, the presence of underground structures, utilities, and outfalls. Licensor will provide Licensee, within one calendar week of any request by Licensee, the known schedule of its shipping and berthing traffic on the Hylebos Waterway for the upcoming month. Any subsequent changes in the shipping and berthing schedule shall be provided to Licensee within 48 hours of receipt by Licensor. All notices to the Licensee shall be directed to:

Paul Fuglevand
HCC Project Manager
Dalton, Olmsted & Fuglevand
19017 120th Avenue N.E., Suite 107
Bothell, Washington 98011
Ph: (206) 486-7905
Fax: (206) 486-7651

All notices to the Licensor shall be directed to:

Name: ED OWENS
Organization: LOVE STAR NORTHWEST
Address: P.O. Box 1730
SEATTLE 98111
Ph: 704-3000
Fax: 704-3012

On-site contact for the Licensor is:

Name: DARRELL HERMAN
Organization: LOVE STAR NORTHWEST
Address: _____
Ph: 704-3025
Fax: 704-3012

3. Liability. The HCC shall, under the terms and conditions set forth below, indemnify and hold harmless Licensor

from and against any and all losses, expenses, costs, obligations, recoveries, liens, claims, demands or causes of action for death, personal injury or property damage including reasonable attorneys' fees and costs but excluding liability relating to any environmental contamination at the Property ("Damages"), that arise out of or in connection with the willful misconduct or negligence of Licensee, its agents, contractors, and/or subcontractors in entering upon or performing the Work on the Property. The indemnity obligation of the HCC hereunder shall be subject to the following conditions and limitations:

(i) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any proportionate share of Damages caused by the negligence or willful misconduct of Licensor or any other third party other than Licensee's agents, contractors and subcontractors and the HCC shall not be liable and shall have no obligation to indemnify Licensor for losses due to interruptions of business or for any other form of incidental or consequential damages;

(ii) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any Damages that are not covered under or that exceed the specified limits and available proceeds of the commercial general liability insurance policy maintained by the HCC. Such insurance policy shall provide coverage in the aggregate amount of \$2,000,000, with a \$1,000,000 per occurrence limitation. Upon request, the HCC shall furnish Licensor proof of such insurance. Licensee shall maintain the insurance in full force and effect during the term of this Agreement and shall provide prior written notice to Licensor in the event of a material change in or cancellation or nonrenewal of the insurance policy. Should Licensee fail to obtain insurance upon nonrenewal or cancellation, this provision shall be subject to re-negotiation by the parties in order to effectuate the intent of this Section 3(ii);

(iii) Licensor shall notify the HCC in writing promptly after Licensor obtains knowledge of the occurrence of any event or the existence of any facts which may become the basis of a claim by Licensor for indemnity pursuant to this section;

(iv) HCC and its agents, contractors, and subcontractors recognize that they are waiving immunity under Industrial Insurance Law, Title 51 RCW, and that this indemnification clause has been mutually negotiated;

(v) the individual members of the HCC shall under no circumstances be liable in any manner to Licensor for

matters addressed by, relating to or arising from this Agreement and the provisions of this Section 3 shall be the sole and exclusive remedy of Licensor with respect to matters addressed by, relating to or arising from this Agreement. For purposes of the enforcement of this provision, the individual members of the HCC shall be construed to be third party beneficiaries of this Agreement.

4. Interference with Licensor's Operations. All activity permitted by this temporary license shall be carried on in such a manner so as not to unduly interfere with Licensor's property and operations or its use of its facilities. Licensee's entry upon Licensor's property shall be coordinated with Licensor in such a way as to minimize such interference. Licensor shall provide the Licensee with any relevant health and safety information applicable to the property if required by Licensor for access. Licensor shall move non-fixed structures or machinery as needed for completion of the Work and shall provide necessary plant training and on-site escort to Licensee and its agents, contractors, and subcontractors if required by Licensor for access.

5. Sampling and Analysis. Licensor or its authorized representative shall have the right, at Licensor's expense, to take split samples of sampling completed on the Property provided enough sampling material is available. Licensor shall give the Licensee one week notice of the desired split sampling and shall cooperate fully in the coordination of the split sampling. Licensee shall have the right, at Licensee's expense, to obtain, within a reasonable period of time, copies of the results of any split samples taken by Licensor. Upon request, Licensor shall also have the right, at Licensor's expense, to obtain, within a reasonable period of time, copies of the sampling results from the Property. It shall be the sole responsibility of the Licensee to lawfully dispose of any material Licensee has gathered as part of the sampling process. Licensor shall have the same responsibility with respect to any split samples taken by Licensor.

6. Effective Date and Term of Agreement. This Agreement shall be effective upon signature by all parties and shall terminate upon receipt by the Licensee of notice that the Work has been completed to the satisfaction of the EPA or such earlier date as EPA may authorize. Licensee shall promptly notify Licensor of such notice. At the completion of the term of this temporary license, Licensee shall restore Licensor's property to a condition as near as possible to the condition of the property before the initiation of the work contemplated herein.

7. Licensor's Warranty. Licensor represents and warrants that it is the owner of or otherwise has authority to grant access to the above described premises.

8. Applicable Law. The parties agree that, without respect to its conflict of laws jurisprudence, the laws of the State of Washington shall apply to this Agreement.

9. Recording. In order to ensure that subsequent purchasers have notice of this Agreement, Licensors hereby agree to record this Agreement with the Pierce County Auditor and forward a conformed copy to the Licensee as set forth in Paragraph 2 of this Agreement. Upon receipt of written notice pursuant to Paragraph 6 of this Agreement of the termination of access granted hereunder, Licensors may, at Licensors' option and expense, cause such termination notice to be similarly recorded.

10. Parties Bound. This Agreement shall be binding upon the Parties, their heirs, successors and assigns.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this agreement as of the day and year opposite each party's signature.

HYLEBOS CLEANUP COMMITTEE

Date: 28 JULY 1994

By: [Signature]

LICENSOR

Date: May 31, 1994

By: Edward J. Lewis

For: LONE STAR NORTHWEST
Owner/Operator

Address: PO Box 1730
SEATTLE 98111

APPENDIX A

Shoreline Sampling, Event 1B: Collect samples from the shoreline of the Hylebos Waterway (0' to + 12' MLLW) to identify sediments or other materials which may be sources of chemicals or concern to waterway sediments, and also to identify sediment which may require remediation. The sampling will generally involve walking along the shoreline and collecting surface sediment from five to ten locations along each property. The sediment from each property will be composited and submitted for chemical analysis. Currently 63 shoreline composites, covering the entire shoreline, have been identified but not yet reviewed or accepted by EPA. In addition, five properties will have core samples drilled below the mudline in locations to be determined shortly. When they have been accepted by the EPA, the locations will be forwarded to all landowners.

EXHIBIT "A"

A PORTION OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 36,
TOWNSHIP 21 NORTH, RANGE 3 EAST OF THE W.M., IN PIERCE COUNTY,
WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE GOVERNMENT PIERHEAD LINE OF HYLEBOS
WATERWAY, SAID POINT BEING 250 FEET NORTH $48^{\circ}15'35''$ WEST AND 68.3 FEET
SOUTH $89^{\circ}13'59''$ WEST FROM THE NORTHEAST CORNER OF THE SOUTHWEST
QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 36, SAID 68.3 FEET
MEASURED ALONG THE NORTH LINE OF SAID SUBDIVISION; THENCE SOUTH
 $41^{\circ}44'25''$ WEST FOR A DISTANCE OF 815.91 FEET TO THE NORTHERLY RIGHT OF
WAY LINE OF TAYLOR WAY; THENCE NORTH $49^{\circ}19'39''$ WEST ALONG SAID RIGHT OF
WAY LINE FOR A DISTANCE OF 373.07 FEET; THENCE NORTH $41^{\circ}44'25''$ EAST FOR
A DISTANCE OF 822.86 FEET TO THE GOVERNMENT PIERHEAD LINE; THENCE
SOUTH $48^{\circ}15'35''$ EAST ALONG SAID PIERHEAD LINE FOR A DISTANCE OF 373
FEET TO THE POINT OF BEGINNING.

CERTIFIED

P 434 426 788

MAIL



LONE STAR NORTHWEST

P.O. Box 1730
Seattle, WA 98111

Len Sorrin
BOGGLE & GATES
Two Union Square
601 Union Street
Seattle, WA 98101

MORRISON & FOERSTER

ATTORNEYS AT LAW

1191 SECOND AVENUE
SUITE 2200
SEATTLE, WASHINGTON 98101
TELEPHONE (206) 292-6300
TELEFACSIMILE (206) 292-6301

RECEIVED

JUL 25 1994

BOGLE & GATES

ENCLOSURE MEMO

TO: Len Sorrin
FROM: Peter Gutierrez
DATE: July 21, 1994
RE: Right of Entry Agreement

RECEIVED
SEP 13 1994
SUPERFUND REMEDIAL DIVISION

Attached for your files is the
Right of Entry Agreement for USG
Interiors.

Attachment

LAW OFFICES OF

GEORGE, HULL, PORTER & KOHLI, P.S.

T. DENNIS GEORGE
BENJAMIN G. PORTER
LAURIE D. KOHLI
HOWARD (TERRY) HALL
JAMES T. LATTING
ANN J. DURHAM
VICKI E. ORRICO
GAIL A. McMONAGLE
DAVID A. LeMASTER

LYMAN W. HULL
of counsel

1301 FIFTH AVENUE, SUITE 2600
SEATTLE, WASHINGTON 98101

POST OFFICE BOX 2286
SEATTLE, WASHINGTON 98111

July 21, 1994

TELEPHONE (206) 624-8890
FACSIMILE (206) 587-0579

RECEIVED

JUL 21 1994

PJG

VIA MESSENGER

Mr. Peter J. Gutierrez
Morrison & Foerster
Suite 2200
1191 Second Avenue
Seattle, WA 98101

Re: Hylebos Right of Entry Agreement


Dear Peter:

Enclosed is the Right of Entry Agreement which has been signed by Frank May for USG Interiors. When the appropriate representative of the HCC has signed the agreement, I would appreciate receiving a copy of the conformed copy.

Very truly yours,

GEORGE, HULL, PORTER & KOHLI, P.S.

By


Howard (Terry) Hall

HIH:cc

Enclosure

cc: Mr. Frank P. May (w/enclosure via regular mail)

CC\HIH\COMMBAY\GUT0721.LTR

COPY RECEIVED

JUL 15 1994

RIGHT OF ENTRY AGREEMENT

GEORGE, HULL, PORTER & KOHLERS

THIS AGREEMENT is made between the Hylebos Cleanup Committee ("HCC" or "Licensee"), and the undersigned owner and/or operator ("Licensor") (collectively the "Parties").

WHEREAS, the HCC, consisting of the Port of Tacoma, Kaiser Aluminum & Chemical Corporation, ASARCO, Inc., Occidental Chemical Corporation, Elf ATOCHEM North America, Inc., and General Metals of Tacoma, Inc., was formed in order to perform pre-remedial design for the Hylebos Waterway located within the Commencement Bay/Near Shore Tideflats Superfund Site, and has entered into an Administrative Order on Consent with the United States Environmental Protection Agency ("EPA"), Docket No. 1093-07-03-104/122 ("AOC"), which includes a Statement of Work ("SOW"), requiring that certain work be performed in connection with the study of the Hylebos Waterway; and

WHEREAS, it will be necessary for Licensee and its collective agents, contractors and subcontractors to enter upon Licensor's property to conduct certain limited environmental work and for purposes of ingress and egress for such work. The work to be performed is set forth in Appendix A of this Agreement (the "Work") and shall not be performed upland of the "higher high water line"; and

WHEREAS, in order to allow the Work to take place, Licensor is willing to grant a temporary license for such entry to Licensee and its agents, contractors, and subcontractors and their consultants, subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties agree as follows:

1. Permission, Location and Access. Subject to the terms and conditions hereinafter set forth, Licensee and its agents, contractors, and subcontractors are granted a temporary license to enter upon Licensor's property, the legal description of which is as follows:

See Appendix B.

and any structures appurtenant thereto (the "Property") for purposes of conducting the Work in accordance with the schedule set forth in Table 1 of the SOW, as may be amended from time to time and for ingress and egress to perform the work. EPA and its designated representatives, the Washington State Department of Ecology and its designated representatives ("DOE"), and the Commencement Bay Natural Resource Damage Trustees and their

designated representatives, are granted a temporary license to the same extent for purposes of supervision of the Work. This temporary license in no way limits the authority of EPA and DOE under applicable federal or state laws to enter said property and to move freely about said property in accordance with such federal or state laws.

2. Entry Upon Property. Licensee and its agents, contractors, and subcontractors shall provide Licensor with at least two calendar weeks notice of the schedule of anticipated dates of access prior to the contemplated start date, and shall promptly notify Licensor of any modifications in the schedule. At least one week prior to each scheduled entry on the Property, Licensor shall provide Licensee with any relevant information regarding site conditions that could be impacted by the scheduled sampling, including, but not limited to, the presence of underground structures, utilities, and outfalls. Licensor will provide Licensee, within one calendar week of any request by Licensee, the known schedule of its shipping and berthing traffic on the Hylebos Waterway for the upcoming month. Any subsequent changes in the shipping and berthing schedule shall be provided to Licensee within 48 hours of receipt by Licensor. All notices to the Licensee shall be directed to:

Paul Fuglevand
HCC Project Manager
Dalton, Olmsted & Fuglevand
19017 120th Avenue N.E., Suite 107
Bothell, Washington 98011
Ph: (206) 486-7905
Fax: (206) 486-7651

All notices to the Licensor shall be directed to:

Name: Mr. Frank P. May
Organization: USG Interiors, Inc.
Address: 125 South Franklin Street
Chicago, IL 60606
Ph: (312) 606-3770
Fax: (312) 606-4484

On-site contact for the Licensor is:

Name: Mr. S.W. Woods
Organization: USG Interiors, Inc.
Address: 2301 Taylor Way
Tacoma, WA 98421
Ph: (206) 383-1537
Fax: (206) 627-0424

3. Liability. The HCC shall, under the terms and conditions set forth below, indemnify and hold harmless Licensor

from and against any and all losses, expenses, costs, obligations, recoveries, liens, claims, demands or causes of action for death, personal injury or property damage including reasonable attorneys' fees and costs but excluding liability relating to any environmental contamination at the Property ("Damages"), that arise out of or in connection with the willful misconduct or negligence of Licensee, its agents, contractors, and/or subcontractors in entering upon or performing the Work on the Property. The indemnity obligation of the HCC hereunder shall be subject to the following conditions and limitations:

(i) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any proportionate share of Damages caused by the negligence or willful misconduct of Licensor or any other third party other than Licensee's agents, contractors and subcontractors and the HCC shall not be liable and shall have no obligation to indemnify Licensor for losses due to interruptions of business or for any other form of incidental or consequential damages;

(ii) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any Damages that are not covered under or that exceed the specified limits and available proceeds of the commercial general liability insurance policy maintained by the HCC. Such insurance policy shall provide coverage in the aggregate amount of \$2,000,000, with a \$1,000,000 per occurrence limitation. Upon request, the HCC shall furnish Licensor proof of such insurance. Licensee shall maintain the insurance in full force and effect during the term of this Agreement and shall provide prior written notice to Licensor in the event of a material change in or cancellation or nonrenewal of the insurance policy. Should Licensee fail to obtain insurance upon nonrenewal or cancellation, this provision shall be subject to renegotiation by the parties in order to effectuate the intent of this Section 3(ii);

(iii) Licensor shall notify the HCC in writing promptly after Licensor obtains knowledge of the occurrence of any event or the existence of any facts which may become the basis of a claim by Licensor for indemnity pursuant to this section;

(iv) HCC and its agents, contractors, and subcontractors recognize that they are waiving immunity under Industrial Insurance Law, Title 51 RCW, and that this indemnification clause has been mutually negotiated;

(v) the individual members of the HCC shall under no circumstances be liable in any manner to Licensor for

matters addressed by, relating to or arising from this Agreement and the provisions of this Section 3 shall be the sole and exclusive remedy of Licensor with respect to matters addressed by, relating to or arising from this Agreement. For purposes of the enforcement of this provision, the individual members of the HCC shall be construed to be third party beneficiaries of this Agreement.

4. Interference with Licensor's Operations. All activity permitted by this temporary license shall be carried on in such a manner so as not to unduly interfere with Licensor's property and operations or its use of its facilities. Licensee's entry upon Licensor's property shall be coordinated with Licensor in such a way as to minimize such interference. Licensor shall provide the Licensee with any relevant health and safety information applicable to the property if required by Licensor for access. Licensor shall move non-fixed structures or machinery as needed for completion of the Work and shall provide necessary plant training and on-site escort to Licensee and its agents, contractors, and subcontractors if required by Licensor for access.

5. Sampling and Analysis. Licensor or its authorized representative shall have the right, at Licensor's expense, to take split samples of sampling completed on the Property provided enough sampling material is available. Licensor shall give the Licensee one week notice of the desired split sampling and shall cooperate fully in the coordination of the split sampling. Licensee shall have the right, at Licensee's expense, to obtain, within a reasonable period of time, copies of the results of any split samples taken by Licensor. Upon request, Licensor shall also have the right, at Licensor's expense, to obtain, within a reasonable period of time, copies of the sampling results from the Property. It shall be the sole responsibility of the Licensee to lawfully dispose of any material Licensee has gathered as part of the sampling process. Licensor shall have the same responsibility with respect to any split samples taken by Licensor.

6. Effective Date and Term of Agreement. This Agreement shall be effective upon signature by all parties and shall terminate upon receipt by the Licensee of notice that the Work has been completed to the satisfaction of the EPA or such earlier date as EPA may authorize. Licensee shall promptly notify Licensor of such notice. At the completion of the term of this temporary license, Licensee shall restore Licensor's property to a condition as near as possible to the condition of the property before the initiation of the work contemplated herein.

7. Licensor's Warranty. Licensor represents and warrants that it is the owner of or otherwise has authority to grant access to the above described premises.

8. Applicable Law. The parties agree that, without respect to its conflict of laws jurisprudence, the laws of the State of Washington shall apply to this Agreement.

9. Recording. In order to ensure that subsequent purchasers have notice of this Agreement, Licensors hereby agree to record this Agreement with the Pierce County Auditor and forward a conformed copy to the Licensee as set forth in Paragraph 2 of this Agreement. Upon receipt of written notice pursuant to Paragraph 6 of this Agreement of the termination of access granted hereunder, Licensors may, at Licensors' option and expense, cause such termination notice to be similarly recorded.

10. Parties Bound. This Agreement shall be binding upon the Parties, their heirs, successors and assigns.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this agreement as of the day and year opposite each party's signature.

HYLEBOS CLEANUP COMMITTEE

Date: 28 JULY 1994 By: [Signature]

LICENSOR

Date: JULY 14, 1994 By: [Signature]

For: USG INTERIORS
Owner/Operator

Address: 125 So. FRANKLIN ST.
CHICAGO, IL 60606

APPENDIX A

Shoreline Sampling, Event 1B: Collect samples from the shoreline of the Hylebos Waterway (0' to + 12' MLLW) to identify sediments or other materials which may be sources of chemicals or concern to waterway sediments, and also to identify sediment which may require remediation. The sampling will generally involve walking along the shoreline and collecting surface sediment from five to ten locations along each property. The sediment from each property will be composited and submitted for chemical analysis. Currently 63 shoreline composites, covering the entire shoreline, have been identified but not yet reviewed or accepted by EPA. In addition, five properties will have core samples drilled below the mudline in locations to be determined shortly. When they have been accepted by the EPA, the locations will be forwarded to all landowners.

APPENDIX B

PARCEL I. Beginning at the northwest corner of the southwest quarter of the northeast quarter of the northeast quarter of Section thirty-five (35), Township twenty-one (21) North, Range three (3) East of the Willamette Meridian, thence on the north line of said subdivision south $88^{\circ} 51' 50''$ east 654.86 feet to the northeast corner of said subdivision, thence north $60^{\circ} 34' 14''$ east 510.38 feet to the southwesterly right-of-way line of Hylebos Creek Waterway; thence on said line of Waterway south $48^{\circ} 14' 46''$ east 200 feet; thence at right angles to said waterway line south $41^{\circ} 45' 14''$ west 908.23 feet to the northeasterly line of Taylor Way Extension County Road; thence on said Road line north $49^{\circ} 18' 16''$ west 848.16 feet to the west line of said southwest quarter of northeast quarter of northeast quarter; thence north $1^{\circ} 30' 42''$ west 20.10 feet to the point of beginning.

PARCEL II. Beginning at the northwest corner of the southwest quarter of the northeast quarter of the northeast quarter of Section 35, Township 21 North, Range 3 East of the Willamette Meridian; thence north $88^{\circ} 51' 50''$ west 23.38 feet to the intersection of the north boundary of Taylor Way; thence south $49^{\circ} 18' 16''$ east 31.53 feet along said boundary; thence north $1^{\circ} 30' 42''$ west 20.10 feet to the point of beginning.

MORRISON & FOERSTER

1191 SECOND AVENUE
SUITE 2200
SEATTLE, WASHINGTON 98101

Len Sorrin
Bogle & Gates
Two Union Square
601 Union St.
Seattle, WA 98101-2346

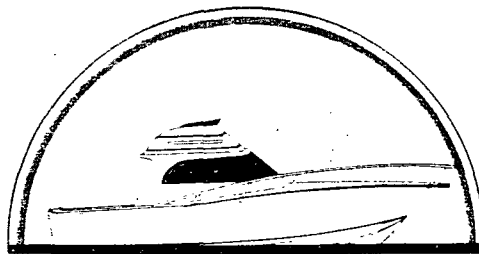
RECEIVED

||| 25 1994

BOGLE & GATES

98101-2327 02





OLE & CHARLIE'S MARINAS

BOAT MOORAGE

SEATTLE LOCATION: 3562 WEST MARGINAL WAY SW., SEATTLE, WASHINGTON 98106 PHONE 206 937-3400
TACOMA LOCATION: 4224 MARINE VIEW DRIVE, TACOMA, WASHINGTON 98422 PHONE 206 272-1173

RECEIVED

AUG 9 1994

GATES

July 26, 1994

Paul Fuglevand
Project Manager for the HCC
Dalton Olmsted & Fuglevand Inc
19017 120 Ave NE Ste 107
Bothell Wa 98011

RECEIVED
SEP 13 1994
SUPERFUND REMEDIAL BRANCH

Dear Mr. Fuglevand,

Please be advised that we would like to have a copy of the report on the results of the sampling you are doing on our property in TACOMA WASHINGTON.

I am enclosing a map of our property for you to locate where the sampling was done, the date, and the results.

Yours truly,

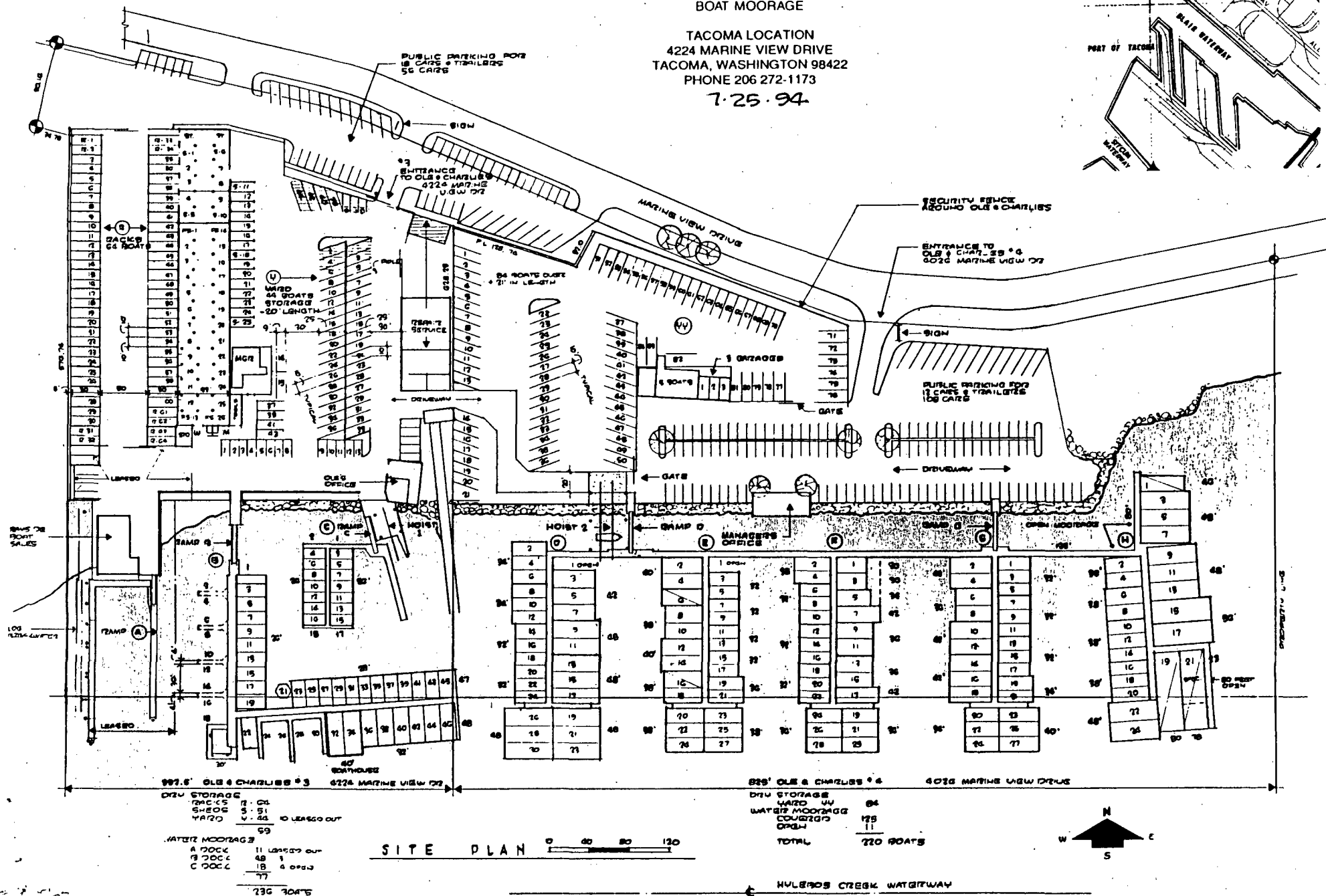
Craig Olson for

Donald S. Olson
President
Ole & Charlies Marinas

DSO:co

Plat

7.25.94





Dalton, Olmsted & Fuglevand, Inc.

Environmental Consultants
19017 120th Avenue N.E., Suite 107
Bothell, Washington 98011

Leonard H. Sorrin
Bogle & Gates
Two Union Square
601 Union Street
Seattle, WA 98101-2346

RECEIVED
AUG 02 1994
BOGLE & GATES

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made between the Hylebos Cleanup Committee ("HCC" or "Licensee"), and the undersigned owner and/or operator ("Licensor") (collectively the "Parties").

WHEREAS, the HCC, consisting of the Port of Tacoma, Kaiser Aluminum & Chemical Corporation, ASARCO, Inc., Occidental Chemical Corporation, Elf ATOCHEM North America, Inc., and General Metals of Tacoma, Inc., was formed in order to perform pre-remedial design for the Hylebos Waterway located within the Commencement Bay/Near Shore Tideflats Superfund Site, and has entered into an Administrative Order on Consent with the United States Environmental Protection Agency ("EPA"), Docket No. 1093-07-03-104/122 ("AOC"), which includes a Statement of Work ("SOW"), requiring that certain work be performed in connection with the study of the Hylebos Waterway; and

WHEREAS, it will be necessary for Licensee and its collective agents, contractors and subcontractors to enter upon Licensor's property to conduct certain limited environmental work and for purposes of ingress and egress for such work. The work to be performed is set forth in Appendix A of this Agreement (the "Work") and shall not be performed upland of the "higher high water line"; and

WHEREAS, in order to allow the Work to take place, Licensor is willing to grant a temporary license for such entry to Licensee and its agents, contractors, and subcontractors and their consultants, subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties agree as follows:

1. Permission, Location and Access. Subject to the terms and conditions hereinafter set forth, Licensee and its agents, contractors, and subcontractors are granted a temporary license to enter upon Licensor's property, the legal description of which is as follows:

Tacoma Boatbuilding Co.
1840 Marine View Drive
Tacoma, WA 98422

and any structures appurtenant thereto (the "Property") for purposes of conducting the Work in accordance with the schedule set forth in Table 1 of the SOW, as may be amended from time to time and for ingress and egress to perform the work. EPA and its designated representatives, the Washington State Department of Ecology and its designated representatives ("DOE"), and the

Commencement Bay Natural Resource Damage Trustees and their designated representatives, are granted a temporary license to the same extent for purposes of supervision of the Work. This temporary license in no way limits the authority of EPA and DOE under applicable federal or state laws to enter said property and to move freely about said property in accordance with such federal or state laws.

2. Entry Upon Property. Licensee and its agents, contractors, and subcontractors shall provide Licensors with at least two calendar weeks notice of the schedule of anticipated dates of access prior to the contemplated start date, and shall promptly notify Licensors of any modifications in the schedule. At least one week prior to each scheduled entry on the Property, Licensors shall provide Licensee with any relevant information regarding site conditions that could be impacted by the scheduled sampling, including, but not limited to, the presence of underground structures, utilities, and outfalls. Licensors will provide Licensee, within one calendar week of any request by Licensee, the known schedule of its shipping and berthing traffic on the Hylebos Waterway for the upcoming month. Any subsequent changes in the shipping and berthing schedule shall be provided to Licensee within 48 hours of receipt by Licensors. All notices to the Licensee shall be directed to:

Paul Fuglevand
HCC Project Manager
Dalton, Olmsted & Fuglevand
19017 120th Avenue N.E., Suite 107
Bothell, Washington 98011
Ph: (206) 486-7905
Fax: (206) 486-7651

All notices to the Licensors shall be directed to:

Name: Ray E. Nichols
Organization: Tacoma Boatbuilding Co.
Address: 1840 Marine View Dr.
Tacoma, WA 98422
Ph: (206) 572-3600
Fax: (206) 572-0548

On-site contact for the Licensors is:

Name: Ray E. Nichols and Tom Pruitt
Organization: Tacoma Boatbuilding Co.
Address: 1840 Marine View Dr.
Tacoma, WA 98422
Ph: (206) 572-3600
Fax: (206) 572-0548

3. Liability. The HCC shall, under the terms and conditions set forth below, indemnify and hold harmless Licensor from and against any and all losses, expenses, costs, obligations, recoveries, liens, claims, demands or causes of action for death, personal injury or property damage including reasonable attorneys' fees and costs but excluding liability relating to any environmental contamination at the Property ("Damages"), that arise out of or in connection with the willful misconduct or negligence of Licensee, its agents, contractors, and/or subcontractors in entering upon or performing the Work on the Property. The indemnity obligation of the HCC hereunder shall be subject to the following conditions and limitations:

(i) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any proportionate share of Damages caused the negligence or willful misconduct of Licensor or any other third party other than Licensee's agents, contractors and subcontractors and the HCC shall not be liable and shall have no obligation to indemnify Licensor for losses due to interruptions of business or for any other form of incidental or consequential damages;

(ii) the HCC shall not be liable and shall have no obligation to indemnify Licensor for any Damages that are not covered under or that exceed the specified limits and available proceeds of the commercial general liability insurance policy maintained by the HCC. Such insurance policy shall provide coverage in the aggregate amount of \$2,000,000, with a \$1,000,000 per occurrence limitation. Upon request, the HCC shall furnish Licensor proof of such insurance;

(iii) Licensor shall notify the HCC in writing promptly after Licensor obtains knowledge of the occurrence of any event or the existence of any facts which may become the basis of a claim by Licensor for indemnity pursuant to this section;

(iv) HCC and its agents, contractors, and subcontractors recognize that they are waiving immunity under Industrial Insurance Law, Title 51 RCW, and that this indemnification clause has been mutually negotiated;

(v) the individual members of the HCC shall under no circumstances be liable in any manner to Licensor for matters addressed by, relating to or arising from this Agreement and the provisions of this Section 3 shall be the sole and exclusive remedy of Licensor with respect to matters addressed by, relating to or arising from this Agreement. For purposes of the enforcement of this provision, the individual members of the HCC shall be

construed to be third party beneficiaries of this Agreement.

4. Interference with Licensor's Operations. All activity permitted by this temporary license shall be carried on in such a manner so as not to unduly interfere with Licensor's property and operations or its use of its facilities. Licensee's entry upon Licensor's property shall be coordinated with Licensor in such a way as to minimize such interference. Licensor shall provide the Licensee with any relevant health and safety information applicable to the property if required by Licensor for access. Licensor shall move non-fixed structures or machinery as needed for completion of the Work and shall provide necessary plant training and on-site escort to Licensee and its agents, contractors, and subcontractors if required by Licensor for access.

5. Sampling and Analysis. Licensor or its authorized representative shall have the right, at Licensor's expense, to take split samples of the shoreline (Event 1B) sampling completed on the Property provided enough sampling material is available. Licensor shall give the Licensee one week notice of the desired split sampling and shall cooperate fully in the coordination of the split sampling. Licensee shall have the right, at Licensee's expense, to obtain, within a reasonable period of time, copies of the results of any split samples taken by Licensor. Upon request, Licensor shall also have the right, at Licensor's expense, to obtain, within a reasonable period of time, copies of the sampling results from the Property. It shall be the sole responsibility of the Licensee to lawfully dispose of any material Licensee has gathered as part of the sampling process. Licensor shall have the same responsibility with respect to any split samples taken by Licensor.

6. Effective Date and Term of Agreement. This Agreement shall be effective upon signature by all parties and shall terminate upon receipt by the Licensee of notice that the Work has been completed to the satisfaction of the EPA or such earlier date as EPA may authorize. Licensee shall promptly notify Licensor of such notice. At the completion of the term of this temporary license, Licensee shall restore Licensor's property to a condition as near as possible to the condition of the property before the initiation of the work contemplated herein. Any monitoring equipment installed on the Property shall be removed in compliance with applicable rules and regulations.

7. Licensor's Warranty. Licensor represents and warrants that it is the owner of or otherwise has authority to grant access to the above described premises.

8. Applicable Law. The parties agree that, without respect to its conflict of laws jurisprudence, the laws of the State of Washington shall apply to this Agreement.

9. Recording. In order to ensure that subsequent purchasers have notice of this Agreement, Licensor hereby agrees to record this Agreement with the Pierce County Auditor and forward a conformed copy to the Licensee as set forth in Paragraph 2 of this Agreement. Upon receipt of written notice pursuant to Paragraph 6 of this Agreement of the termination of access granted hereunder, Licensor may, at Licensor's option and expense, cause such termination notice to be similarly recorded.

10. Parties Bound. This Agreement shall be binding upon the Parties, their heirs, successors and assigns.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this agreement as of the day and year opposite each party's signature.

HYLEBOS CLEANUP COMMITTEE

Date: 28 July 1994

By: 

LICENSOR

Date: 5 July 1994

By: 

Ray E. Nichols, VP & Gen. Mgr.

For: Tacoma Boatbuilding Co.

Owner/Operator

Address: 1840 Marine View Dr.

Tacoma, WA 98422

APPENDIX A

Shoreline Sampling, Event 1B: Collect samples from the shoreline of the Hylebos Waterway (0' to + 12' MLLW) to identify sediments or other materials which may be sources of chemicals or concern to waterway sediments, and also to identify sediment which may require remediation. The sampling will generally involve walking along the shoreline and collecting surface sediment from five to ten locations along each property. The sediment from each property will be composited and submitted for chemical analysis. Currently 63 shoreline composites, covering the entire shoreline, have been identified but not yet reviewed or accepted by EPA. In addition, five properties will have core samples drilled below the mudline in locations to be determined shortly. When they have been accepted by the EPA, the locations will be forwarded to all landowners.

ENVIRONMENTAL PROTECTION AGENCY

1200 SIXTH AVENUE, M/S **SO-155**

SEATTLE, WASHINGTON 98101-9797

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE, \$3

EQUAL OPPORTUNITY

PM

WA 981

JUL

1994

JUL

22

SEATTLE WA 981

1994

JUL

FIRST CLASS MAIL

Norman D. Webb, Chairman
Hylebos Cleanup Committee
c/o General Metals of Tacoma, Inc.
4927 NW Front Avenue
Portland, OR 97218

RECEIVED
SEP 13 1994
SUPERFUND REMEDIAL DIVISION



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue
Seattle, Washington 98101

July 21, 1994

Reply To
Attn Of: SO-155

Norman D. Webb, Chairman
Hylebos Cleanup Committee
c/o General Metals of Tacoma, Inc.
4927 NW Front Avenue
Portland, Oregon 97218

Re: Hylebos Waterway Problem Areas
Commencement Bay Nearshore/Tideflats Superfund Site
Individual Corporate Members of the Hylebos Cleanup
Committee as Authorized Representatives of the United States
Environmental Protection Agency for Purposes of Entry onto
Property Owned by Third Parties Along the Hylebos Waterway

Dear Mr. Webb:

Pursuant to Section 104(e)(3) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9604(e)(3), the United States Environmental Protection Agency (EPA) designates ASARCO, Inc., Elf Atochem North America Inc., General Metals of Tacoma, Inc., Kaiser Aluminum & Chemical Corp., Occidental Chemical Corp., and the Port of Tacoma, together associated as the Hylebos Cleanup Committee (HCC), and their employees, contractors and agents, as representatives of EPA solely for purposes of entry to property owned by third parties along the Hylebos Waterway, located in Tacoma, Washington. Copies of the Consent For Access to Property forms for properties to which EPA has obtained access are attached to this letter. This authorization extends only to entry to said properties for purposes of implementing the pre-remedial design activities set forth in the Administrative Order on Consent for Pre-remedial Design Study, U.S. EPA Docket No. 1093-07-03-104/122 (AOC), including the Statement of Work attached thereto.

EPA is authorized to designate the individual members of the HCC as its representatives pursuant to Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3). The authority granted to the President in the above-referenced section of CERCLA was delegated to EPA in Executive Order 12580, issued January 23, 1987, re-delegated to the Regional Administrators (Delegation No. 14-6) on September 13, 1987, and further re-delegated to the Superfund Deputy Branch Chief for NPL Operations, pursuant to Regional Delegation R10 1290.45.

As a condition precedent to the designation expressed in this letter, and as agreed to in Sections XIII and XXIV of the AOC, the individual corporate members of the HCC will reimburse the United States for expenses incurred by the United States in obtaining access on their behalf and indemnify, save and hold harmless the United States for any and all claims related to acts or omissions of the individual members of the HCC, their employees, agents, servants, receivers, successors, assignees, contractors, or subcontractors as the representatives of EPA.

Please contact Lori Houck, Assistant Regional Counsel, at (206) 553-1115, if you have questions or comments regarding this matter.

Sincerely,



Carol A. Rushin, Chief
Superfund Branch

cc: Allison Hiltner
Leonard Sorrin

FAX COVERSHEET

TO:

2 PA, Region 10

DATE:

7/18/94

FAX NO:

533-0163

NO. OF PAGES:

7
(including this page)

TIME:

SUBJ:

FROM:

DANIEL L. GOODELL, Attorney

FAX NO:

(206) 275-8398

NOTES:

Please send me your address
so that these documents can be mailed.

If you have any questions regarding this fax, please call
DANIEL L. GOODELL'S office at 275-8399 or 275-8398.

NOTE: THIS FACSIMILE TRANSMISSION IS INTENDED ONLY FOR THE
ADDRESSEE SHOWN HEREIN. IT MAY CONTAIN INFORMATION THAT IS
PRIVILEGED, CONFIDENTIAL OR OTHERWISE PROTECTED FROM DISCLOSURE.
ANY REVIEW, DISSEMINATION OR USE OF THIS TRANSMISSION OR ITS
CONTENTS BY PERSONS OTHER THAN THE ADDRESSEE IS STRICTLY
PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR,
PLEASE NOTIFY US.

07 13 84 10:00 FAX 206 272 5732
07 12 84 16:25 FAX 206 853 0160EISENHOWER CARLS
ORC REGION IV

0003-005

CONSENT FOR ACCESS TO PROPERTYName: J&G INVESTMENTSAddress of Property: 1690 Marine View DriveTacoma, WA 98422

I consent to entry and continued access to property owned and controlled by me or my company, as more specifically described in the description attached to this agreement, by officers, employees and authorized representatives of the United States Environmental Protection Agency ("U.S. EPA"), and officers, employees and representatives of the Hylebos Cleanup Committee, which is performing Pre-Remedial Design Activities under an Administrative Order on Consent with U.S. EPA, for the following purposes:

To complete those tasks required for Pre-Remedial Design Activities of the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore/Tideflats Site ("Site"), which may include, but are not limited to, the following:

- to conduct geophysical, bathymetric or intertidal bank surveys;
- to collect such soil, intertidal or marine sediment, surface water, groundwater and air samples, and take such photographs or other visual observations as may be determined to be necessary for pre-remedial design purposes;
- to perform such tests or studies as needed to evaluate the effectiveness of source control measures; and
- to perform studies or measurements as needed to determine the applicability of different technology

07/13/94 10:34 FAX 206 272 5732
07/12/94 18:28 FAX 206 338 0100

EISENHOWER CARLS
JAN 1991

004/005

options for sediment disposal or source control effectiveness.

I also consent to entry and continued access to officers, employees and authorized representatives of the Washington Department of Ecology and the Natural Resource Trustees for purposes of overseeing Pre-Remedial Design Activities.

I will not knowingly interfere with the activities being conducted by the Hylebos Cleanup Committee, and will coordinate with EPA and the Hylebos Cleanup Committee, to the extent possible, to ensure that my operations on my property or personal property will not unreasonably obstruct access to my property or the property of third parties.

I realize that these actions by U.S. EPA are undertaken pursuant to its response and enforcement responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act (Superfund), 42 U.S.C. § 9601, et seq.

This written permission is given by me voluntarily with knowledge of my right to refuse and without threats or promises of any kind.

My consent to entry onto the property is conditioned upon my receiving at least two days' notice of the first sampling event and at least one calendar weeks' notice of subsequent sampling events when access will be necessary. My consent requires, as an additional condition, that activities permitted under this access agreement be carried out in such a manner as to not unduly

07-13-94 10:34 FAX 206 272 5732
07-12-94 10:26 FAX 206 272 5732

EISENHOWER CARLS

005:005

interfere with the property and my operations and uses of the property.

I understand that I am entitled to obtain a split sample of materials sampled on the property provided enough sampling material is available. I will provide U.S. EPA with at least two days' notice for the first sampling event and at least one calendar weeks' notice for subsequent sampling events if I desire to obtain split samples. I shall cooperate in the coordination of the split sampling. I shall provide U.S. EPA with a copy of the written reports of the split sampling.

My consent requires, as an additional condition, that upon my request, I receive a copy of the written reports of sampling taken under the authority of this agreement. I agree to pay a reasonable fee to cover the cost of copying documents containing the results of sampling.

This consent shall be effective upon my signature. This consent can be revoked by me for good cause. I agree to provide thirty days' advance notice of revocation if I decide to revoke my consent. This consent shall terminate when the work required under the Administrative Order on Consent with U.S. EPA has been completed.


Signature

Title

~~Partner~~ PARTNER

7-17-94
Date

CONSENT FOR ACCESS TO PROPERTYName: JONES-GOODSELL CORPORATIONAddress of Property: 1690 Marine View DriveTacoma, WA 98422

I consent to entry and continued access to property owned and controlled by me or my company, as more specifically described in the description attached to this agreement, by officers, employees and authorized representatives of the United States Environmental Protection Agency ("U.S. EPA"), and officers, employees and representatives of the Hylebos Cleanup Committee, which is performing Pre-Remedial Design Activities under an Administrative Order on Consent with U.S. EPA, for the following purposes:

To complete those tasks required for Pre-Remedial Design Activities of the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore/Tideflats Site ("Site"), which may include, but are not limited to, the following:

- to conduct geophysical, bathymetric or intertidal bank surveys;
- to collect such soil, intertidal or marine sediment, surface water, groundwater and air samples, and take such photographs or other visual observations as may be determined to be necessary for pre-remedial design purposes;
- to perform such tests or studies as needed to evaluate the effectiveness of source control measures; and
- to perform studies or measurements as needed to determine the applicability of different technology

07/13/94 10:34 FAX 206 272 5732
07/12/94 18:25 FAX 206 330 0100

EISENHOWER CARLS
VINE REGIONAL

07/04/005

options for sediment disposal or source control effectiveness.

I also consent to entry and continued access to officers, employees and authorized representatives of the Washington Department of Ecology and the Natural Resource Trustees for purposes of overseeing Pre-Remedial Design Activities.

I will not knowingly interfere with the activities being conducted by the Hylebos Cleanup Committee, and will coordinate with EPA and the Hylebos Cleanup Committee, to the extent possible, to ensure that my operations on my property or personal property will not unreasonably obstruct access to my property or the property of third parties.

I realize that these actions by U.S. EPA are undertaken pursuant to its response and enforcement responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act (Superfund), 42 U.S.C. § 9601, et seq.

This written permission is given by me voluntarily with knowledge of my right to refuse and without threats or promises of any kind.

My consent to entry onto the property is conditioned upon my receiving at least two days' notice of the first sampling event and at least one calendar weeks' notice of subsequent sampling events when access will be necessary. My consent requires, as an additional condition, that activities permitted under this access agreement be carried out in such a manner as to not unduly

07-13-94 10:01 FAX 208 272 5732
07-12-94 16:28 FAX 208 300 0100

EISENHOWER CARLS


0005 005

Interfere with the property and my operations and uses of the property.

I understand that I am entitled to obtain a split sample of materials sampled on the property provided enough sampling material is available. I will provide U.S. EPA with at least two days' notice for the first sampling event and at least one calendar weeks' notice for subsequent sampling events if I desire to obtain split samples. I shall cooperate in the coordination of the split sampling. I shall provide U.S. EPA with a copy of the written reports of the split sampling.

My consent requires, as an additional condition, that upon my request, I receive a copy of the written reports of sampling taken under the authority of this agreement. I agree to pay a reasonable fee to cover the cost of copying documents containing the results of sampling.

This consent shall be effective upon my signature. This consent can be revoked by me for good cause. I agree to provide thirty days' advance notice of revocation if I decide to revoke my consent. This consent shall terminate when the work required under the Administrative Order on Consent with U.S. EPA has been completed.


Signature

Title

PRES.

Date

7-17-94

CONSENT FOR ACCESS TO PROPERTY

Name: Joseph Simon & Sons Inc.Address of Property: 1515 Taylor Way,
Tacoma, WA

I consent to entry and continued access to property owned and controlled by me or my company, as more specifically described in the description attached to this agreement, by officers, employees and authorized representatives of the United States Environmental Protection Agency ("U.S. EPA"), and officers, employees and representatives of the Hylebos Cleanup Committee, which is performing Pre-Remedial Design Activities under an Administrative Order on Consent with U.S. EPA, for the following purposes:

To complete those tasks required for Pre-Remedial Design Activities of the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore/Tideflats Site ("Site"), which may include, but are not limited to, the following:

- to conduct geophysical, bathymetric or intertidal bank surveys;
- to collect such soil, intertidal or marine sediment, surface water, groundwater and air samples, and take such photographs or other visual observations as may be determined to be necessary for pre-remedial design purposes;
- to perform such tests or studies as needed to evaluate the effectiveness of source control measures; and
- to perform studies or measurements as needed to determine the applicability of different technology

options for sediment disposal or source control effectiveness.

I also consent to entry and continued access to officers, employees and authorized representatives of the Washington Department of Ecology and the Natural Resource Trustees for purposes of overseeing Pre-Remedial Design Activities.

I will not knowingly interfere with the activities being conducted by the Hylebos Cleanup Committee, and will coordinate with EPA and the Hylebos Cleanup Committee, to the extent possible, to ensure that my operations on my property or personal property will not unreasonably obstruct access to my property or the property of third parties.

I realize that these actions by U.S. EPA are undertaken pursuant to its response and enforcement responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act (Superfund), 42 U.S.C. § 9601, et seq.

This written permission is given by me voluntarily with knowledge of my right to refuse and without threats or promises of any kind.


My consent to entry onto the property is conditioned upon my receiving at least two days' notice of the first sampling event and at least one calendar weeks' notice of subsequent sampling events when access will be necessary. My consent requires, as an additional condition, that activities permitted under this access agreement be carried out in such a manner as to not unduly

interfere with the property and my operations and uses of the property.

I understand that I am entitled to obtain a split sample of materials sampled on the property provided enough sampling material is available. I will provide U.S. EPA with at least two days' notice for the first sampling event and at least one calendar weeks' notice for subsequent sampling events if I desire to obtain split samples. I shall cooperate in the coordination of the split sampling. I shall provide U.S. EPA with a copy of the written reports of the split sampling.

My consent requires, as an additional condition, that upon my request, I receive a copy of the written reports of sampling taken under the authority of this agreement. I agree to pay a reasonable fee to cover the cost of copying documents containing the results of sampling.

This consent shall be effective upon my signature. This consent can be revoked by me for good cause. I agree to provide thirty days' advance notice of revocation if I decide to revoke my consent. This consent shall terminate when the work required under the Administrative Order on Consent with U.S. EPA has been completed.


Signature

Controller
Title

7-14-94
Date



City of Tacoma
Office of the City Attorney - Department of Public Utilities

RECEIVED
JUL 12 1994

July 11, 1994

OFFICE OF REGIONAL COUNSEL
EPA - REGION X

Lori L. Houck
Assistant Regional Counsel
U. S. EPA
Region 10
1200 Sixth Avenue
Seattle, WA 98101

Dear Ms. Houck:

RE: Consent to Access; Hylebos Waterway Problem
Areas Premedial Design Activities

Enclosed find the original Consent for Access to Property as discussed in
your July 6, 1994 letter.

Very truly yours,

G. S. Karavitis
Sr. Assistant City Attorney

cc: M. Gamble (Enc.)

CONSENT FOR ACCESS TO PROPERTY

Name: City of Tacoma, Department of Public Utilities

Address of Property: Light Division Thermal Plant

1171 Taylor Way, Tacoma, WA

I consent to entry and continued access to property owned and controlled by the City of Tacoma, Department of Public Utilities, as more specifically described in the description attached to this agreement, for the purposes listed below, by officers, employees, and authorized representatives of the United States Environmental Protection Agency ("U.S. EPA"), and officers, employees, and representatives of the Hylebos Cleanup Committee, which is performing pre-remedial design activities under an Administrative Order on Consent with U.S. EPA.

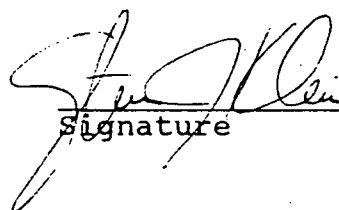
To complete those tasks required for Pre-Remedial Design Activities of the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore/Tideflats Site ("Site"), which may include, but are not limited to, the following:

- to conduct geophysical, bathymetric or intertidal bank surveys;
- to collect such soil, intertidal or marine sediment, surface water, groundwater, and air samples and take such photographs or other visual observations as may be determined to be necessary for pre-remedial design purposes;
- to perform such tests or studies as needed to evaluate the effectiveness of source control measures; and
- to perform studies or measurements as needed to determine the applicability of different technology options for sediment disposal or source control effectiveness.

I also consent to entry and continued access to officers, employees, and authorized representatives of the Washington Department of Ecology and the Natural Resource Trustees for purposes of overseeing pre-remedial design activities.

I realize that these actions by U.S. EPA are undertaken pursuant to its response and enforcement responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund), 42 U.S.C. § 9601, et seq.

This written permission is given by me voluntarily with knowledge of my right to refuse and without threats or promises of any kind, and is revocable upon 48 hours' notice.

 Light Superintendent
Signature Title

7-8-94
Date

Approved as to form & legality:


S. J. Karavatos
Chief Asst. City Attorney



Law Department
Tacoma, Washington 98477
Air Express:
33663 Weyerhaeuser Way South
Federal Way, Washington 98003
Writers Direct Dial Number
Tel(206)924-3440
Fax(206)924-3253

July 16, 1994

RECEIVED
JUL 19 1994

VIA FACSIMILE AND U.S. MAIL

OFFICE OF REGIONAL COUNSEL
EPA - REGION X

Tod A. Gold
Assistant General Counsel
U. S. Environmental Protection Agency, Region 10
1200 Sixth Avenue
Seattle, Washington 98101

Re: Commencement Bay Nearshore/Tideflats Superfund Site
Site Access Agreement

Dear Mr. Gold:

Enclosed is the executed Consent to Access to Property permitting EPA and the HCC to enter Weyerhaeuser's Tacoma Export Facility. The anticipated shipping schedule for the facility during the next three weeks is as follows:

- July 18 to July 20, 1994 - No traffic expected
- July 21 to July 23, 1994 - Vessel loading
- July 25 to July 29, 1994 - Vessels loading
- August 1 to August 7, 1994 - No traffic expected

Also enclosed is a copy of the safety requirements germane to visitors at Weyerhaeuser's Tacoma Export Facility. In general, visitors are expected to:

- Wear hard hats, florescent vests or jackets, and safety shoes while on site;
- Use safety glasses in designated areas; and
- Wear hearing protection while in the debarker area.

In addition, visitors must be accompanied by an escort at all times. Please contact John Gross at (206)924-4190 or me at (206)924-3440 to schedule site access and to

Tod A. Gold
July 16, 1994
Page - 2

arrange for a Health and Safety briefing in accordance with the terms of the access agreement.

Very truly yours,



Kimberly A. Hughes
Attorney

Enclosures

cc: Kevin Godbout - CH 1L28
John Gross - CH 1K29
Allison Hiltner - Site Manager, Superfund Remediation Branch, EPA
Len Sorrin - Bogle & Gates

t:\hughk\cercla\gold.101

CONSENT TO ACCESS TO PROPERTY

Owner Name: Weyerhaeuser Company

Real Property Address: Tacoma Log Export Facility
3401 Taylor Way
Tacoma, Washington 98421

Weyerhaeuser Company ("Owner") hereby consents to entry and continued access to property owned and controlled by it, as more specifically described in Attachment "A" to this Agreement, by officers, employees, and authorized representatives of the United States Environmental Protection Agency ("U.S. EPA"), and members, employees, and authorized representatives of the Hylebos Cleanup Committee ("HCC"). The HCC is performing Pre-Remedial Design Activities under Administrative Order on Consent (USEPA Docket No. 1093-07-06-104/22) with U.S. EPA, for the following purposes:

To complete those tasks required for Pre-Remedial Design Activities of the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore/Tideflats Site ("Site"), which may include, but are not limited to, the following:

- to conduct geophysical, bathymetric or intertidal bank surveys;
- to collect such soil, intertidal or marine sediment, surface water, groundwater and air samples, and take such photographs or other visual observations as may be determined to be necessary for pre-remedial design purposes;
- to perform such tests or studies as needed to evaluate the effectiveness of source control measures;
- to perform studies or measurements as needed to determine the applicability of different technology options for sediment disposal or source control effectiveness.

Owner also consents to entry and continued access to officers, employees and authorized representatives of the Washington Department of Ecology ("Ecology") and the Natural Resource Trustees for the Purposes of overseeing Pre-Remedial Design Activities.

Weyerhaeuser acknowledges that the actions of U.S. EPA under this Agreement are undertaken pursuant to its response and enforcement responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act (Superfund), 42 U.S.C. §6901 et. seq.

Owner will, to the best of its ability, take such efforts as may be reasonably necessary to ensure that its operations on the real property do not (1) impair the activities of the HCC or EPA under this Agreement or (2) obstruct access to the real property of third parties.

Owner's consent to entry onto the property is conditioned upon the following terms:

- for the testing scheduled to begin on July 18, 1984, the receipt of at least two (2) days' notice of the schedule of anticipated dates when access will be necessary. For testing conducted subsequent to July 25, 1994, the receipt of at least five (5) days' notice of the schedule of anticipated dates when access will be necessary;
- all activities conducted under this Agreement must be carried out in a manner that does not unduly interfere with the Owner's operations on and uses of the property. Owner agrees to provide EPA and the HCC with an expected schedule for shipping activity at the property on a monthly basis;
- prior to entering the property, EPA or the HCC shall arrange for their officers, members, employees, agents, and representatives that will require access to the property to complete Owner's Health and Safety Training program at which Owner shall provide relevant health and safety information to be followed.

Owner is entitled to obtain a split sample of material sampled on the property. Owner agrees to provide U.S. EPA with four (4) days' advance notice of its desire to obtain split samples and shall cooperate in the coordination of the split sampling. Owner agrees to provide U.S. EPA with a copy of the written reports of the split sampling.

Upon Owner's request EPA and/or the HCC shall provide a copy of the written reports of sampling taken under the authority of this agreement. Owner shall to pay a reasonable fee to cover the cost of copying documents containing the results of sampling.

///

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///

This Agreement shall terminate (1) thirty (30) days' after notice by Owner of its revocation of consent to access for cause or (2) when the work required under Administrative Order on Consent, USEPA Docket No. 1093-07-06-104/22 has been completed by the HCC.

DATED THIS 16th day of July, 1994.

WEYERHAEUSER COMPANY

by: Kimberly A. Hughes
Title: Attorney Law Dept.

t:\hughk\cercla\access.d01

ATTACHMENT A

ATTACHMENT A

A portion of the Southeast quarter of the Northwest quarter and the Northeast quarter of the Southwest quarter and the West half of the Southeast quarter of Section 36, Township 21 North, Range 3 East of the Willamette Meridian and more particularly described as follows:

Commencing at the Northwest corner of the Northeast quarter of the Southwest quarter of said Section 36; thence South $89^{\circ}13'41''$ East along the North line of said subdivision for a distance of 800.00 feet to the point of beginning; thence North $01^{\circ}17'50''$ East parallel with the West line of the Southeast quarter of the Northwest quarter of said Section 36 for a distance of 228.30 feet to the Government pierhead line of Hylebos Waterway; thence South $48^{\circ}15'35''$ East along said pierhead line for a distance of 1706.85 feet to a point 623.00 feet North $48^{\circ}15'35''$ West and 68.30 feet South $89^{\circ}13'59''$ West from the Northeast corner of the Southwest quarter of the Southeast quarter of said Section 36, said 68.30 feet measured along the North line of said subdivision; thence South $41^{\circ}44'25''$ West for a distance of 822.86 feet to the Northerly right-of-way line of Taylor Way; thence North $49^{\circ}19'39''$ West along said right-of-way line for a distance of 995.56 feet to the intersection with a line parallel with the West line of the Northeast quarter of the Southwest quarter and 800.00 feet East of said West line, as measured along the North line of said subdivision; thence North $01^{\circ}34'59''$ East along said parallel line for a distance of 873.59 feet to the point of beginning. All encompassing an area of 25.88 acres more or less.

SUBJECT to easement granted to the Port of Tacoma recorded under Pierce County Auditor's Fee #1865190.



Tacoma Export Facility
3401 Taylor Way East
Tacoma, Washington 98421
Tel (206) 924 7920

SEPTEMBER 2, 1992

TO OUR VALUED CUSTOMERS;

ATTACHED ARE SOME PROVISIONS WE HAVE MADE IN REGARD TO INSURING A
SAFE ENVIRONMENT FOR ALL PERSONS VISITING WEYEHAEUSER SORT YARDS.
PLEASE TAKE A MOMENT TO LOOKOVER THE REQUIREMENTS FOR EACH OF THE AREAS:
THE TACOMA EXPORT FACILITY, THE SMITH ISLAND LOG YARD, AND THE VAIL LOG
YARD. YOUR COMPLIANCE WITH THESE PROCEDURES WILL HELP US PROVIDE FOR
THE SAFETY OF ALL VISITORS.

THANK YOU FOR YOUR HELP AND COOPERATION.

SINCERELY,

A handwritten signature in cursive script, appearing to read "R.W. McLean".

R.W. MCLEAN

CC:ELMS GROUP

TACOMA EXPORT FACILITY

SAFETY RULES

JANUARY 1993

- * Foot traffic in the yard to be announced by radio - location and number of people.
- * Auto and delivery vehicles to be announced by radio (route and destination) and clearance approved before entering the yard.
- * Log truck drivers to be familiar with rules regarding truck route, wrapper racks, and unloading procedures.
- * Blow horn to alert scalers when hauling loads by scaling bunks.
- * Stacker and sorter operators call barker operator when pulling logs away from #1 or #2 sortline bunks --- wait for response.
- * Do not leave conveyors or barkers running when out of the sortline or barker cabs.
- * Follow lock-out/tag-out procedures when working on equipment (hog, conveyors, etc.).
- * Wear safety harness when working on top of hog or on top of bark bins.
- * Wear hard hats when out of machine cabs or debarker cabs.
- * Report all unsafe acts or conditions to your supervisor.
- * Maintenance crews will have exclusive use of radio frequency when working on equipment where radio communications are necessary. Maintenance crews will inform the yard personnel and longshoremen whenever necessary.
- * Personal protective equipment required in the yard.
- * Smoking allowed in designated areas only.

TACOMA EXPORT FACILITY
VISITOR CONDUCT EXPECTATIONS

Visitors to the Tacoma Export Facility are always welcome. To insure safety for all visitors and our employees, visitors must comply with the following safety requirements:

- * Vehicles must follow the traffic pattern.
- * Report to the office for authorization to enter the log sorting or storage areas.
- * Hard hats must be worn at all times in all areas of log yard, shop and log boom.
- * High visibility vests or raincoats must be worn at all times while in the log sorting or storage areas.
- * Caulked shoes or Korkers and life vests must be worn while on log boom or rafts.
- * Log decks must be inspected from the ground. Climbing on log decks is prohibited.
- * No admittance to the log yard or storage areas unless Weyerhaeuser personnel are present on site or arrangements are made in advance for security personnel to be present.

The required personal protective equipment is available for your use and can be obtained in the office. Thank you for your cooperation in maintaining a safe work environment.

OGDEN
MURPHY
WALLACE

ATTORNEYS AT LAW

2100 Westlake Center Tower • 1601 Fifth Avenue • Seattle, WA 98101-1686 • (206) 447-7000 • Fax (206) 447-0215

John F. DeVleming

July 26, 1994

Leonard H. Sornin
BOGLE & GATES
601 Union Street
51st Floor
Seattle, WA 98101-2346

Re: Hylebos Right of Entry Agreement

Dear Len:

Enclosed please find a Right of Entry Agreement signed by CENEX allowing the HCC to perform the Appendix A preremedial design activities on CENEX's property. You will note that this agreement also allows the HCC to contact CENEX tenants directly to coordinate its activities on CENEX's property.

This Right of Entry Agreement supercedes and cancels the Access Agreement which we previously signed and forwarded to you, but which you found unacceptable.

Very truly yours,

OGDEN MURPHY WALLACE


John DeVleming

JFD:lkf

cc: Dave Baker (w/o encl.)
Roger Tschida (w/o encl.)
Lori Houck (w/encl.)
Peter Gutierrez (w/encl.)
Norm Webb (w/encl.)

JFD76043.1SL/F5165.20003/B5165.

RIGHT OF ENTRY AGREEMENT

Name of Licensor: CENEX, Ag., Inc.

Address of Property: 1801 Taylor Way, Tacoma, Washington.

Cenex Ag., Inc. consents to entry and continued access to property owned and controlled by it, as more specifically described in the description attached to this agreement, by officers, employees, and authorized representatives of the United States Environmental Protection Agency ("U.S. EPA"), and officers, employees, and representatives of the Hylebos Cleanup Committee ("HCC"), consisting of the Port of Tacoma, Kaiser Aluminum & Chemical Corporation, ASARCO, Inc., Occidental Chemical Corporation, Elf ATOCHEM North America, Inc., and General Metals of Tacoma, Inc., which is performing pre-remedial design activities under an Administrative Order on Consent with U.S. EPA, for the following purposes:

To complete those tasks required for Pre-Remedial Design Activities of the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore/Tideflats Site ("Site"), as set forth on the attached Appendix A.

Cenex also consents to entry and continued access to officers, employees, and authorized representatives of the Washington Department of Ecology and the Natural Resource Trustees for purposes of overseeing pre-remedial design activities.

Cenex will not interfere with the activities being conducted by the Hylebos Cleanup Committee, and will coordinate with EPA and

the Hylebos Cleanup Committee, to the extent possible, to ensure that its operations on its property or its personal property will not obstruct access to its property or the property of third parties.

Cenex's property is now and may from time to time be leased to tenants. Cenex will permit the Hylebos Cleanup Committee and EPA to contact these tenants directly to coordinate activities on the property.

Cenex realizes that these actions by U.S. EPA are undertaken pursuant to its response and enforcement responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund), 42 U.S.C. § 9601, et seq.

This written permission is given voluntarily with knowledge of the right to refuse and without threats or promises of any kind.

John M. Koon VICE PRESIDENT
Signature Title

7-22-94
Date

APPENDIX A

Shoreline Sampling, Event 1B: Collect samples from the shoreline of the Hylebos Waterway (0' to + 12' MLLW) to identify sediments or other materials which may be sources of chemicals or concern to waterway sediments, and also to identify sediment which may require remediation. The sampling will generally involve walking along the shoreline and collecting surface sediment from five to ten locations along each property. The sediment from each property will be composited and submitted for chemical analysis. Currently 63 shoreline composites, covering the entire shoreline, have been identified but not yet reviewed or accepted by EPA. In addition, five properties will have core samples drilled below the mudline in locations to be determined shortly. When they have been accepted by the EPA, the locations will be forwarded to all landowners.

TACOMA, PIERCE COUNTY

Beginning at the intersection of the North line of Taylor Way as now established with a line which is parallel with and 804 feet West of the East line of Government Lot 9 in Section 26, Township 21 North, Range 3, E.W.M., in Pierce County, State of Washington, thence along said North line of Taylor Way North $69^{\circ}23'23''$ West 744.87 feet, more or less, to the West line of the East 165 feet of Government Lot 8 in Section 26, Township 21 North, Range 3, E.W.M.; thence North $0^{\circ}34'10''$ East along said West line 935.33 feet, more or less, to the southerly line of the waterway of Commercial Waterway District No. 1, Pierce County, State of Washington, known as Hylebos Waterway; thence along said waterway line South $69^{\circ}23''$ East 813.67 feet, more or less, to a point on a line which is parallel with and 754 feet West of the East line of said Government Lot 9; thence along said parallel line South $1^{\circ}27'35''$ West 129.88 feet, more or less, to a point which is 799.94 feet North measured along said parallel line from the northerly line of a tract conveyed by Ernest Dolge, Incorporated, to Pierce County, Washington by dedication deed recorded under Auditor's No. 558896; thence North $88^{\circ}32'25''$ West 50 feet; thence South $1^{\circ}27'35''$ West to the point of beginning. Except the West 325 feet thereof.